



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 19 जुलाई, 2010 / 28 आषाढ़, 1932

हिमाचल प्रदेश सरकार

INDUSTRIES DEPARTMENT

NOTIFICATION

Shimla-171002, the 14th July, 2010

No.Ind-A(C)4-1/2008.—In pursuance of section 7(2) of State Financial Corporation Act, 1951(as amended upto date), the Governor, Himachal Pradesh hereby accords approval for providing unconditional & irrevocable guarantee for raising Rs. 16.05 Crores through non-SLR bonds by HPFC subject to the conditions that the arranger fees shall not exceed 0.5% and the interest payable on the bonds be fixed through bidding process. HP Financial Corporation will pay guarantee fee & commitment charges at the prescribed rates.

The other terms and conditions for the proposed non-SLR bonds would be as under:—

1.	Size	Rs.16.05 crores
2.	Nature of Bond	Non-SLR, Taxable, Non-convertible Bonds
3.	Tenure	10 years.
4.	Put/call option	At the end of 6th year
5.	Redemption	At the end of 6th, 7th, 8th, 9th & 10th years in the ratio of 20:20:20:20:20.
6.	Security & guarantee	Unconditional & irrevocable State Government guarantee.
7.	Minimum Application Money.	Rs. 25 lakh(One Bond)
8.	Value of each Bond	Rs. 25 lakh
9.	Payment of interest	Annually
10.	Arranger fee (except the amount invested by Cooperative Banks and PSUs of Himachal Pradesh) not to exceed 0.5% inclusive all.	To be quoted by the arranger. The arranger fee shall not exceed 0.5%.
11.	Transferability	By endorsement and delivery
12.	Coupon	9.50% to 10.50% through bidding process

This issue with the prior concurrence of the Finance department obtained *vide* their U.O. No. Fin-IF/51435359 dated 28.6.2010.

By Order,
Sd/-
Principal Secretary (Inds.).

Ref.02/2009

SH SITA RAM V/S D.F.O. KHALINI

29.5.2010: -

Present: - Sh. J.R. Sharma Advocate for the Petitioner.
Sh. Sandeep Attri, Ld,DDA for respondent with Sh. Susheel Kumar,
Dy. Ranger.

In view of the statement of the petitioner, recorded separately, the claim petition stands dismissed as withdrawn for having been compromised. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
29.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.28/2009

SH HARBANS LAL V/S D.F.O. KHALINI

29.5.2010: -

Present: - Sh. J.R. Sharma Advocate for the Petitioner.
Sh. Sandeep Attri, Ld,DDA for respondent with Sh. Susheel Kumar,
Dy. Ranger.

In view of the statement of the petitioner, recorded separately, the claim petition stands dismissed as withdrawn for having been compromised. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
29.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.532005

SH ANIL KUMAR MEHTA V/S M/S INDOFARM EQUIPMENT LTD. BADDI

29.5.2010: -
Present: - Sh. A.K.Mehta, petitioner in person.
None for respondent.

The petitioner has filed photo attested copy of the Hon'ble High Court dated 27.05.2010, the attested copy of which is on the file, application number 139 of 2003.

I have gone through the orders of the Hon'ble High Court. In its para No.3, it has been stated/mentioned that this reference number 53 of 2005, on the file of the Labour court, Shimla will stand stuck off from its file. Since this reference No. 53 of 2005 also stands amicably settled, consequent upon the order passed by the Hon'ble High Court in LPA No.13/2010 and LPA No. 20/2010, my answer to this reference is accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
29.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.104/2009

SH SARWAN KUMAR V/S THE MANAGER, TIBETIAN TOPAN GOPA WELFARE SOCIETY, SIRMOUR

31.5.2010: -
Present: - Petitioner with Sh. Virender Sharma, Advocate for the Petitioner.
Sh. Rahul Mahajan, Advocate for respondent.

In view of the separate statement of the petitioner, recorded today, settlement has already been effected between the parties. Accordingly, the claim filed by the petitioner stands dismissed as compromised. Resultantly, the reference stands answered. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
31.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

SH HUKAM CHAND V/S DFO, KHALINI

30.4.2010:-

Present:- Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner made today which is on record, this reference stands answered, as compromised, accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
30.4.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.,23/2007

SH.ROOP SINGH & OTHERS V/S DIRECTOR OF AGRICULTURE SHIMLA

12.5.2010:-

Present:- Sh Dushyany Dadwal, Advocate for petitioners including
the proposed LR's of Sh Roop Singh , since deceased.
Sh Jagdish Kanwer, Ld DDA for respondent.

Taking note of the proposal made by Sh Dushyant Dadwal, Advocate for the petitioner including the LR's of late Sh.Roop Singh (deceased), upon their instruction, that , if the money , which stands deposited, as per stand taken in the reply, is paid to the petitioners, then they will not prosecute with their claim. Sh. Mohan Lal has brought the money by getting it withdrawn from the Bank.

Shri Dushyant Dadwal, who is representing the petitioners including the LR's of the deceased(petitioner no.1) and also the petitioners hio are are present in the Court, have stated that they are willing and ready to receive the amount as per their entitlement and share, which has been brought before this Court.

As per separate statement of Shri Dushyant Dadwal Advocate for the petitioners, i9ncluding the LR's of the deceased, which has also been signed by the petitioners, present today, the money as per their entitlement and share have been paid to Sh. Dushyant Dadwal , in the Court, who has further stated that as per the instructions of the petitioners including , that of the LR's of late Sh Roop Singh(Petitioner no.1) the claim of the petitioner be dismissed as compromised.

The reference which has been made this Court by the Labour Commissioner, HP is in respect of the petitioners who have filed the statement of claim and also Shri Puran Singh S/o Sh Rattan Singh, Sh Man Singh S/o Sh Karan Bahadur and Smt Shakuntla W/o Sh.Prem Bahadur. From the record. It is highlighted that the notices had been issued to all the persons in respect of whom, the reference had been made to this Court ut expect the petitioners , others did not put their presence before this Court . For this reason, no statement of claim was filed by said Puran Singh & others.

The petitioners including the LR's of late Sh Roop Singh (petitioner No.1) have affected a compromise with the respondent in terms of the statement of Dushyant Dadwal, Advocate which has also been signed by the petitioners, present today. Consequently, as far as petitioners. Who have filed the statement of claim, are concerned, their claim stands disposed of as compromised and accordingly qua them this reference stand answered as such.

As per as other persons namely Sh Puran Singh, Man Singh and Smt. Shakuntla are concerned. Whose name do find mention in the reference , my answer to the same has to be in negative because the said persons failed to establish their alleged claim before this Court. Let a copy of the award be sent to the appropriate government for publication in official gazette, File, after completion , be consigned to records.

AnnouncedL:
13,5.2010

*Presiding Judge,
Labour Court, Shimla.*

SH RAM RATTAN V/S D.F.O. KHALINI

29.5.2010: -

Present: - Sh. J.R. Sharma Advocate for the Petitioner.
Sh. Sandeep Attri, Ld,DDA for respondent with Sh. Susheel Kumar,
Dy. Ranger.

In view of the statement of Sh. J.R. Sharma, Advocate for the petitioner, this claim petition stands dismissed as withdrawn for having been compromised. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
29.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.38/2009

SH ROOP DASS V/S DFO, KHALINI

30.4.2010:-

Present:- Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner made today which is on record, this reference stands answered, as compromised, accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
30.4.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.57/2008

SH MOHAN LAL V/S DFO, KHALINI

30.4.2010:-

Present:- Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner made today which is on record, this reference stands answered, as compromised, accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
30.4.2010.

*Presiding Judge,
Labour Court, Shimla.*

SH TOTA RAM V/S DFO, KHALINI

30.4.2010:-

Present:- Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner made today which is on record, this reference stands answered, as compromised, accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
30.4.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.66/2008

SH RAMESH KUMAR V/S DFO KHALINI

1.5.2010:-

Present:- Sh. Petitioner with Shri Rajesh Verma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner, on file, the claim filed by him stands dismissed as withdrawn to having been compromised, Consequently, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
1.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.67/2008

SH BESAR DASS V/S D.F.O. KHALINI

1.5.2010: -

Present: - Sh. Petitioner with Shri Rajesh Verma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner, on file, the claim filed by him stands dismissed as withdrawn to having been compromised, Consequently, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
1.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

SH ROOP LAL V/S DFO, KHALINI

30.4.2010:-

Present:- Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner made today which is on record, this reference stands answered, as compromised, accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
30.4.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.69/2008.

SH MITI SINGH V/S DFO, KHALINI

1.5.2010:-

Present:- Sh. Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner, on file,the claim filed by him stands dismissed as withdrawn to having been compromised, Consequently, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
1.5.2010.

*Presiding Judge,
Labour Court, Shimla.*

Ref.70/2008

SH MOHAN LAL V/S DFO, KHALINI

30.4.2010:-

Present:- Petitioner with Shri J.R.Sharma, Advocate for the Petitioner.
Shri Jagdish Kanwar, Ld,DDA for respondent.

In view of the statement of the petitioner made today which is on record, this reference stands answered, as compromised, accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
30.4.2010.

*Presiding Judge,
Labour Court, Shimla.*

SH.KALENDER SHARMA V/S FACTORY MANAGER, DEEPAK SPINNERS LTD,BADDI

8.4.2010

Present:- Sh.J.C.Bhardwaj Ld AR for petitioner.
None for respondent.

No PWs present. Many opportunities have been afforded to the petitioner to produce his witnesses. On the previous date, the adjournment had been given subject to payment of cost of Rs.250/- before that, the adjournments has been given subject to payment of costs of Rs. 100/- on 14.7.2009 and Rs.100/- on 20.10.2009. In these circumstances when already many opportunities have been afforded and previous costs have also not been paid. I have left with no other alternative but to proceed further to answer the reference.

The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of Shri Kalender Sharma S/o Shri Kanhiyal Lal workmen by the Management of M/s Deepak Spinnars Ltd .121 Industrial Area Baddi, Distt Solan, HP w.e.f 1.8.2004 on the basis of domestic enquiry is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

The assertion of the petitioner, as borne out from the separate claim filed by him, is to this effect that he was employed as carding operator on 29.11.2001 and worked till 13.11.2003 and that on 14.11.2003, he was orally terminated from service without serving any show cause notice, charge sheet, termination letter etc. It is also averred that he approached the respondent for his re-engagement but the management ignored to take him back on duty. Then an artificial and bald show cause notice, dated 19.11.2003 was sent to him by the respondent through registered post and then an enquiry was conducted against him whereas his services had already been termination on 14.11.2003.

No reply was filed by the respondent despite opportunity.

The contention of the petitioner is to his effect that his services were terminated on 14.11.2003,orally, without serving any show cause notice/ charge sheet. Further, he kept on going to the factory from 14.11.2003 to 18.11.2003, but the management ignored to take him back on duty. His termination on 1.8.2004 as mentioned in the reference is contrary to the facts.

From the statement of claim, it is further highlighted that Shri Sanjeev Sharma, Advocate, had conducted a domestic enquiry against the petitioner but he was allegedly not allowed to participate in the said enquiry. Apart from this, he was unable to defend himself in the enquiry for the reason that he was not being aid any subsistence allowance by the management. From the facts narrated in the statement of claim, It is borne out that the petitioner has assailed the domestic enquiry, on the plea that he was not allowed to participate in the same for the reason that he was not allowed to enter the factory gate by the Security Guard. Moreover, on the said date i.e. 5.1.2004, he kept on waiting till 5.00PM but neither the said Enquiry Officer (Rajeev Sharma, Advocate) came to near the factory gate nor the management allowed him to enter inside.

Although, the petitioner has specifically alleged that he was not allowed to enter the factory gate on 5.1.2004, in order to participate in the domestic enquiry, and that till 5.00PM,he kept on waiting at the factory gate but there is no substantial evidence, led by him, in support of such plea. Even, he did not care to step in to the witness box, despite having been afforded opportunities to do so, for getting supported the alleged facts narrated in the statement of claim, on oath. It is true that the respondent has failed to file the reply to the statement of claim filed by the petitioner but that does not absolve the petitioner to prove this fact that he was prevented from participating in the domestic enquiry and

that the same was conducted by Sh. Sanjeev Sharma, Advocate when he had already been terminated from service on 14.11.2003 and further that Sanjeev Sharma, Advocate was not competent to conduct any such enquiry against him. In the absence of evidence, having been led by the petitioner, to prove his allegation assertions, I have left with no other alternate but to hold that the petitioner has failed to prove that his termination on the basis of alleged domestic enquiry is illegal and unjustified.

For what has been stated above, the statement of claim filed by the petitioner is dismissed and in consequence thereof, the reference is answered against him and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.
08-04.2010.

*Presiding Judge
Labour Court, Shimla
Camp at Solan, HP.*

Ref.107/2003

THE GENERAL SECRETARY HIMACHAL KHADI ASHRAM V/S HIMACHAL KHADI ASHRAM

12.5.2010:-

Present:- Sh Sanjeev Sharma , Advocate for petitioner.
Sh Virender Chauhan Advocate , for the respondent.

In view of the separate statement of Sh Sanjeev Sharma , Advocate for the petitioners, the claim petition stands disposed of as compromised with the liberty to the petitioners/ workers Union to raise fresh demands , if any , as per law.

Consequent upon , the claim petition having been disposed of as Compromised, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be Consigned to records.

Announce:-
12.5.2010

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref no. 8 of 2007
Instituted on 20.2.2007.
Decided on. 13.5.2010.

Om Prakash C/o District Secretary, Bhartiya Mazdoor
Sangh, C/o Mechanical Store-cum- Distribution, Sub
Division, HPPWD Shimla-6.

Petitioner.

VS.

The Executive Engineer, Mechanical Division, HPPWD
Shimla-6.

Respondent.

Reference under section 10 of the
Industrial Disputes Act, 1947.

For petitioner: Shri J.L. Sharma, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by
the appropriate government, is as under:-

"Whether the demand raised by the District
Secretary, Bhartiya Mazdoor Sangh C/o
Mechanical Store-cum- Distribution, Sub
Division, HPPWD Shimla-6 through their demand
notice dated 26.6.2001 (copy enclosed) before
the Executive Engineer, Mechanical Division,
HPPWD, Dhalli, Shimla -12, is tenable, legal
and justified? If yes, what relief, the above
aggrieved workman is entitled to?"

In nutshell, the case of the petitioner,
is that he has been working as store keeper with the
respondent for the last 27 years. In fact, in the year,
1980, he had been appointed as clerk on daily wages.
During the year 1994, his services were regularized as
store keeper w.e.f. 1.1.1994 in the pay scale of Rs.



ATTESTED

For and to the
H.P. Industrial Tribunal-Cum
Labour Court, SHIMLA



Presiding Judge,
H P Industrial Tribunal-cum-
Labour Court Shimla

950-1800 vide office order dated 24.12.1994. In terms of the office order, he became entitled for the pay and allowances of the post of store keeper from 1.1.1994. It is alleged that for the reasons, best known to the respondents, the arrears of the revised pay scale for the period from 1.1.1994 to 31.12.1994 amounting to Rs. 14,590/- were not paid to him. Although, he made several representations, verbal as well in writing, to the respondents, but of no avail. Since, the respondent failed to release the arrears, aforesaid and also that no reason to the contrary were intimated, the petitioner is entitled to such arrears with interest @ 15% from 1.2.1994 till its realization.



3. The claim of the petitioner has been contested on having raised preliminary objections inter alia qua maintainability, limitation and jurisdiction. On merits, it has been maintained that the arrears in the pay scale of Rs. 950-1800/- for the period 1.1.1994 to 31.12.1994 amounting to Rs. 14,626/-

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Reader to the

H.P. Industrial Tribunal-Cum
Labour Court, SHIMLA

have been prepared and credited in the GPF account of the petitioner, vide bill no. 254 of 3/2000. Thus, the claim petition is not legally maintainable.



4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. The following issues were framed on 23.6.2008.

Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla

1. Whether the demand raised by the petitioner through their demand notice dated 26.6.2001 before the Executive Engineer, Mechanical

Division, HPPWD, Dhalli, Shimla-12 is
tenable, legal and justified?

OPP.....

2. If issue no.1 is proved in affirmative, to
what relief, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not
maintainable in the present form?

OPR.....

4. Whether the reference is time barred as
alleged?

OPR.....

5. Relief.

6. I have heard the learned counsel for the
parties and have also gone through the record of the
case carefully.



7. For the reasons to be recorded
hereinafter while discussing issues for determination my
findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered against
the petitioner, per
operative part of award.

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Order to the
H.P. Industrial Tribunal-Cum
Labour Court, SHIMLA



Reasons for findings.

Issue no.1

8. Ld. Counsel appearing on behalf of the
petitioner, has submitted that since the respondent had
withheld the arrears of the pay for the period in
question, the petitioner is entitled to be awarded
interest on the same.

President Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla

9. Per contra, Ld. DDA urged that in the absence of any such rules/government instructions, the petitioner cannot be awarded interest on the amount of arrears as claimed by him.

10. As per the demand, raised by the petitioner through District Secretary, Bhartiya Mazdoor Sangh dated 26.6.2001, interest had been claimed on the arrears w.e.f. 1.1.1994, till the year in which those were credited to his GPF account i.e. in the year 2000.

However, when regard is given to the facts, narrated in the statement of claim, which has been filed before this Court, the contention of the petitioner is to this effect that he has not been paid arrears to the tune of Rs. 14,590/- for the period w.e.f. 1.1.1994 to 31.12.1994 and that on the said amount, he has claimed interest @ 15% till its realization. The stand of the respondent is very specific, that vide bill no. 254 of 3/2000, the arrears for the period from 1.1.1994 to 31.12.1994 amounting to Rs. 14,626/- have been prepared and credited to the GPF account of the petitioner. Even,

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Labour Court, SHIMLA

the demand notice, which had been raised before the Labour-cum-Conciliation Officer, this fact has not been denied that arrears, for the period in question, had not been paid to him. In that notice, the petitioner through District Secretary, Bhartiya Mazdoor Sangh, had sought to claim interest on the arrears, as aforesaid, which were deposited in his GPF account, in the year 2000.

From the reference, made to this Court, it is further
Presiding Judge,
H.P. Indu. Trib. cum Lab. Ct., Shimla
that it pertains to demand notice dated

26.6.2001 as per which, the petitioner had claimed interest on the arrears w.e.f. 1.1.1994 till the year 2000 on which the same were credited in his GPF account. It is not the reference, before this Court, that the respondents had not paid the arrears to the petitioner, when he had raised demand notice dated 26.6.2001. In these circumstances, the only question which is required to be answered by this Court is whether the demand of the petitioner, to claim interest on the arrears for the period w.e.f. 1.1.1994 to 31.12.1994, amounting to Rs. 14,626/- as stated by the respondents, till the date when those were credited in his GPF account vide bill no. 254 of 03/2000, is legally tenable and justified or not?



It has been admitted by the petitioner, while appearing in the witness box as PW-1, that in the year, 2000 he had got the arrears but only after six years and for those years, he is required to be granted interest.

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Reader to the
H.P. Industrial Tribunal-Cum
Labour Court, SHIMLA



12. Er. B.C Negi, (RW-1), proves this fact that arrears in question have been paid to the petitioner on 21.3.2000 by crediting the amount in his GPF account. In the cross examination, he admitted that no interest was paid to him.

13. From the oral evidence, as discussed above and also the pay bill Ex. PA and the schedule of GPF deduction, Ex. PB, it stands duly proved that on 31.3.2000, the arrears amounting to Rs. 14,626/- for the

Presiding Judge,
H.P. Industrial Tribunal-Cum
Labour Court, Shimla

Period in question, had been credited to the GPF amount

of the petitioner, without paying interest thereon. Although, the petitioner has claimed interest @15% per annum on the said arrears from the date when those became due, till the date, when those were credited in his GPF account but in support of such plea, no such rules/instructions, issued by the government, have been brought on record on the basis of which, he can justify his such claim for interest at the aforesaid rate. It has been rightly argued by Id. DDA, that in the absence of such rules/government instructions, the petitioner cannot be said to be entitled to claim interest on the amount of arrears from 1.1.1994 till, when those were credited in his (petitioner) GPF account. I may observe that Id. Counsel for the petitioner could not cite any case law in support of his contention that the petitioner is entitled to claim interest on the amount in question from the date when it became due till the date, when it was credited in his GPF account. In the absence of any such case law/instructions, issued by the government, I have no hesitation in holding that the demand raised by the petitioner for claiming interest @ 15% per annum is not legal, tenable and justified. Thus, my answer to this issue is in "No".

ATTESTED

Read to the
H.P. Industrial Tribunal-Cum
Labour Court, Shimla



Issue no.2.

14. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue no.3.

15. The statement of claim has been filed by the petitioner, pursuance to the reference made to this

Presiding Judge,
H.P. Industrial Tribunal-cum.
Labour Court, Shimla

Court by the Labour Commissioner, HP. It could not be shown by Ld. DDA, as to why this claim petition is not maintainable. Accordingly, my answer to this issue is in "No".

Issue no.4

16. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of Hon'ble Supreme Court as reported in (1999) 6 SCC 82, titled as Ajayab Singh vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. as under:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

In view of the above cited ruling, this petition is held not to be barred by limitation.

Accordingly, this issue is answered in negative.

Relief.

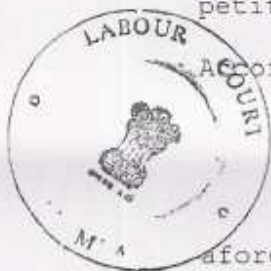
As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent.

Let a copy of this award be sent to the appropriate
 Presiding Judge
 H. P. Industrial Tribunal-cum-
 Labour Court, Shimla



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Reader to the
 H.P. Industrial Tribunal-Cum-
 Labour Court, SHIMLA





IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref no. 17 of 2003
Instituted on 3.2.2003.
Decided on. 6.5.2010.

Sanjay Kumar S/o Shri Som Parkash, House no. 230
Dagshai CAntt- 173210, District Solan, HP.

..Petitioner

VS.

The Principal, Army Public School, Dagshai, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the retrenchment of Shri Sanjay Kumar workman S/o Shri Som Parkash w.e.f. 27.1.1999 as alleged by the workman by the Principal, Army Public School, Dagshai Cantt-173210, District Solan, HP is legal and justified? If not, what relief of back wages, seniority and other benefits, the above workman is entitled to?"

2. Briefly stated, the facts of the case are that the petitioner was appointed as ground man on 17.7.1996 and his duties were of permanent nature. Till 27.1.1999, he continuously remained in employment. During this period, he, had done his duties with full devotion. Without any justification, he was removed from service on 27.1.1999, despite the fact that he had completed 240 days in each calendar year, against the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). It is further averred that many juniors to him have been retained in the service/job. Since, his services were terminated without notice and paying retrenchment compensation, he deserves to be reinstated with all the consequential benefits.

3. The claim has been contested on having raised various preliminary objections including maintainability and bad for non joinder of necessary parties. On merits, it has been asserted that the petitioner had been appointed to do the job of Safaiwala as a casual labourer on 17.7.1996. It has been denied that he worked in the School till 27.1.1999. His services were being engaged as and when there had been excessive load of work or the regular Safaiwala used to go on leave. In these circumstances, there has been no violation of the provisions of the Act.

4. The pleading of the parties, gave rise to the following issues, which were struck on 14.3.2007:

1. Whether the termination of the petitioner is in violation of section 25F of the Industrial Disputes Act, 1947? If so, its effect?

..OPP.

2. Whether the petitioner is gainfully employee? If so, its effect?

..OPR.

3. Whether the reference is not maintainable?

..OPR.

4. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 No

Issue No. 2 Not proved.

Issue No. 3 No.

Relief. Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

7. For the petitioner, it has been vehemently argued that since his services were terminated, without notice and paying retrenchment compensation, the same is illegal. Ld. Counsel also submitted that on the record, sufficient evidence has been lead to prove that the petitioner had been in service for more than 240 days in each calendar year. Moreover, since the respondent has failed to produce the attendance register, the best evidence in the case, an adverse inference is required to be drawn against the respondent.

8. On the other hand, it has been urged on behalf of the respondent that the appointment of the petitioner was casual in nature because his services were being requisitioned as and when there had been rush of work and the regular Safaiwala used to proceed on leave. Further, there was no necessity to have complied with the provisions of the Act, particularly, when the petitioner failed to establish that he had been in continuous service for more than 240 days in each calendar year.

9. The case of the petitioner is to this effect, that he had been engaged on 17.7.1996 as ground man by the respondent and remained on such post till 17.1.1999, when his services were illegally terminated. When, regard is given to his statement (PW-1), it is highlighted that he has supported all the material facts, including that he had worked for more than 240 days, in each calendar year, and further that Ex. P/A is the photocopy of his pass book. He further says that the attendance register was being maintained by the School. In the cross examination, he has admitted of having been paid the wages/pay as per vouchers and that the same had been deposited in his bank account/pass book. The last pay/wages paid to him were Rs. 1360/- for the period 30.4.1997 to 25.5.1997.

10. Lt. Col. S.D Lakhanpal (RW-1) has supported the defence version and all material facts including that the petitioner had been engaged, on casual basis on 17.7.1996 by way of stop gap arrangement. His services were also being engaged as and when the regular sweeper used to go on leave. The wages were paid to him by way of cheques for the periods starting from 17.7.1996 till 25.5.1997. The petitioner had not completed 240 days in any calendar year. He denied that the petitioner regularly worked from 17.7.1996 to 27.1.1999. The attendance register of workmen of the School is being maintained but the same is destroyed after five years.

11. Although, the assertion of the petitioner is that he had been engaged on 17.7.1996 till 17.1.1999 but his such plea does not get approval/support from Ex. PA, the photocopy of the pass book, on which he has relied. This document goes to show that last pay was deposited in his account on 6.6.1997. From this document, the version of Lt. Col. S.D Lakhanpal (RW-1) that the petitioner was being paid wages through cheques and that his last wages were for the period from 30.4.1997 to 25.5.1997 gets substantiated. At this stage, I would like to point out that initial burden was upon the petitioner to prove that he had completed 240 days preceding twelve calendar months from the date when his services were terminated. It is true that on the record, the respondent has not brought the attendance register but from the statement of RW-1 (S.D Lakhanpal), it is quite clear that the same is destroyed after five years. In such circumstances, particularly, when the onus was upon the petitioner to have proved that he had been in service for 240 days preceding twelve calendar months from the date, when his were terminated, no adverse inference can be drawn against the respondent for not having produced the attendance register. I may also observe that the petitioner has not examined any other employee/worker of the School who could have supported this fact that he remained in service till 17.1.1999. It has been held by the Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchayat V/s Dayabhai Amar Singh* that:-

“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

12. The requirement of the provisions of the Act were to be complied with only if the petitioner could have proved that he had been in job/service for 240 days preceding twelve calendar months from the date of his termination. Since, he has not discharged this onus, I have no hesitation in holding that there has not been any violation of the provisions of the Act, particularly, section 25F. The petitioner has also not proved on record that the juniors to him have been retained/engaged by the respondent after his removal. Accordingly, my answer to his issue is in “No”.

Issue No. 2

13. To prove this issue, the onus has been fixed on the respondent. I may observe that as per law, the onus should have been upon the petitioner to prove that he is not gainfully employed but since the onus of this issue has been fixed on the respondent and that at no point of time, the fixing of this onus was challenged, I have been left with no other alternative but to look for the evidence led by the respondent to prove this issue. When, regard is given to the statement of RW-1 (Lft. Col. S.D Lakhanpal), it is revealed that no where he has sated that the petitioner is gainfully employed. Thus, for want of specific evidence, I hold that the respondent has failed to discharge the onus of this issue. Accordingly, my answer to this issue is in “No”.

Issue No. 3

14. The Ld. Counsel for the respondent argued that the reference is not maintainable because it has not been made by the appropriate government. As per him, the appropriate government should have been the Central and not the State.

15. In my view, this contention of the Ld. Counsel cannot be accepted, particularly, for the reason that it could not be shown on behalf of the respondent that the profits generated from the School, are credited to the consolidated funds and not distributed to the non public funds. Accordingly, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 6th May, 2010 in the presence of parties counsels.

(Parveen)

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla, Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 20 of 2003
Instituted on 3.2.2003.
Decided on. 22.4.2010.

Arvind Kumar S/o Shri Safari Ram, Security Guard C/o Shri Karan Singh Chauah, DSW Physical Education, HP University Shimla-5.

..Petitioner.

VS.

The Managing Director, Hotel Asia the Down, Kachi Ghatti, Shimla-5, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Amit Vaid, Advocate.
For respondent: Shri Alok Ranjan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Arvind Kumar S/o Shri Safari Ram, Security Guard by the Managing Director, Hotel Asia the Down, Kachhi Ghatti, Shimla-10 w.e.f. 7.8.2001 without any notice and without any chargesheet and without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits, the above workman is entitled to?"

2. The case of the petitioner, as is borne out, from the statement of claim filed before this Court, is to this effect that he was employed as Security Guard/worker by the respondent and as such worked for the period from 7.11.2000 to 7.8.2001 on which date his services were terminated without assigning any reason. His last drawn wages were Rs. 1530/-. In fact, feeling aggrieved by his illegal termination, he had raised an Industrial Dispute by serving demand notice. The respondent while filing reply to the notice had alleged that the petitioner had not been employed as Security Guard/worker but was engaged as trainee Security Guard initially for 85 days, which period was again extended upto 6.8.2001 and that his services stood automatically terminated by the efflux of time. In this way, for the first time, he (petitioner) came to know about such capricious stand of the respondent which he refuted being incorrect and malicious. It is alleged that the respondent could not have appointed trainee workers as their establishment was not registered under Apprenticeship Act. The alleged paper arrangement was just to scuttle the aim and object of the law and for this reason, such acts on the part of the respondent amount to unfair labour practice. Further, the respondent cannot be allowed to take advantage of such illegal documents to fulfill their ulterior motives. Preceding his termination of services, the petitioner had already completed continuous service of more than 240 days. It is further averred that the petitioner had been employed against work of permanent nature, and for this reason, the plea of automatic termination of his services does not arise at all. After his termination, fresh hands have been retained against

his work and that one such person is Satish Chauhan S/o Shri Vachiter Singh. It is further averred that he (petitioner) was also made to work with the store department for two months. Further, the service conditions of the workmen including the petitioner, are governed by certified standing orders which includes the mode of appointment and termination. After his termination, he could not get employment and is still unemployed.

3. The claim of the petitioner has been contested on having raised preliminary objections inter alia qua maintainability, estoppel and that he has not approached the court with clean hands. On merits, it has been stated that he had been employed on short term contract subject to the availability of work. He was employed on 7.11.2000, on his application, for a period of 85 days ending on 30.1.2001. As per contract, his services were to be terminated without any order which he agreed by signing the same. As per contract, he was to draw a consolidated sum of Rs. 15.30/- per month. His services stood terminated on 30.1.2001, after the expiry of contract. At that time, he did not raise any hue or cry. On 12.2.2001, when there was rush of work, the petitioner again approached the respondent for job and was engaged purely on short term contract for 85 days ending on 6.5.2001 and that after the expiry of that contract, his services stood automatically terminated. It is asserted that during his third stint, his services were highly unsatisfactory for the reason that he often remained absent from duty. For this reason, he was reprimanded orally. On 6.7.2001, he was issued warning in reply to which he tendered written apology. On 6.8.2001, on the completion of contract, his services stood automatically terminated and he also took the full & final settlement of his claim/wages from the respondent (Hotel). Since the nature of job was purely contractual, there was no need of serving any notice and paying any salary in lieu thereof to the petitioner. It is denied that he has completed 240 days of continuous service. As far as Satish is concerned, he was also employed on short term contract and that his services stand terminated. At present, he is not working with the respondent. The services of the petitioner were never governed by certified standing orders for the reason that he was purely temporary employee on short term contract.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent. It has further been asserted that he (petitioner) had made application for employment as security guard and thereafter rendered services till 7.8.2001 from the date of his employment. All the alleged documents i.e work contract/agreements had been signed by him, only at the time of first employment i.e on 7.11.2000, as, at that time he had been told that it was mere formality as per law/norms of the respondent.

5. The following issues were framed on 5.6.2006:

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of section 25F of the Industrial Disputes Act, 1947? If so, its effect? OPP..
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP..
3. Whether the petition in the present form is not maintainable? OPR..
4. Whether the petition is barred by limitation and the petitioner is having no locus standi? OPR..
5. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1	No.
issue No. 2	Becomes redundant.
issue No. 3	No.
issue No. 4.	No.
Relief.	Reference answered accordingly against the petitioner.

REASONS FOR FINDINGS

Issue No.1

8. Ld. Counsel for the petitioner has submitted that since the petitioner had completed more than 240 days in the twelve calendar months preceding his termination, the respondent was required to comply with the provisions of section 25F of the Industrial Disputes Act, 1947. Since, no such compliance was made, his termination is illegal. Ld.

Counsel further submitted that the petitioner does not admit his signatures on the alleged contract. In case, the services of the petitioner were to be engaged for short duration, then there was no occasion for the respondent to have reengaged him from time to time. This, clearly goes to show that the documents, allegedly got procured by the respondent, are manufactured one. Even, in the reply which was filed before Conciliation Officer, no such plea was taken by the respondent that the petitioner was irregular in his duties and that he tendered apology. In order to buttress his contention that the job which had been offered to the petitioner was of permanent nature, the Ld. Counsel drew my attention towards the statement of RW1, Shri Dhani Ram wherein it has been stated that security job has been given to private personnel.

9. On the other hand, Ld. Counsel for the respondent has urged that material on record clearly goes to show that on the application of the petitioner, he had been employed/engaged, purely on contract basis for a period of 85 days, as and when the work was available and that as per the terms of the contract, his services stood automatically terminated after the expiry of the contract period. The Ld. Counsel also referred to Ex. RC as per which, the claim of the petitioner was settled in full & final. Since, the employment of the petitioner was governed by the temporary contract which he signed with the respondent, there was no need for issuance of notice to him as per the requirement of section 25F of the Industrial Disputes Act, 1947.

10. At the time of arguments, the Ld. Counsel for the petitioner has submitted that the alleged temporary contracts were not signed by the petitioner and that the same are manufactured documents but this contention of the Ld. Counsel, for petitioner, is of no help particularly when the regard is given to the facts narrated in the rejoinder which has been filed by the petitioner. In the rejoinder, it has been specifically mentioned that the petitioner had signed the documents i.e work contract/agreements but only at the time of first employment i.e 7.11.2000. While appearing in the witness box as PW1, the petitioner has also admitted that Ex. RA is the copy of application which he had made to the respondent and that Ex. RD, copy of temporary contract. From, his such statement, it is quite clear that he admits that in order to seek job from the respondent, he had made an application and was provided job as per temporary contract, Ex. RD w.e.f. 7.11.2000 to 30.1.2001. The perusal of the contract goes to show that he had been employed on a fixed monthly amount of Rs. 1530/- and that his services were to stand automatically terminated on the completion of the contract period and that no separate order in this respect was required to be passed.

11. Shri Dhani Ram Thakur, RW1 also supports this fact that the petitioner had been engaged, on contract basis, and that the nature of his duties were temporary vide Ex. RD. After the expiry of the contract period, his services were dispensed with and that he was reengaged on 12.2.2001 vide Ex. RE and on 15.5.2001 vide Ex. RF. Initially, the work and conduct of the petitioner was satisfactory but subsequently, he became habitual absentee. In this regard, he (petitioner) apologized in writing vide Ex. RB. No fresh appointees were engaged against the post being held by the petitioner. Now, the security has been given to private personnel. The services of the petitioner have not been terminated by the respondent. He denied that the petitioner had been engaged as trainee and that he has completed 240 days, preceding his termination.

12. From the statement of RW1, coupled with the facts narrated in the rejoinder, it stands duly proved, on record, that the petitioner had been engaged by the respondent on the basis of temporary contracts/agreements which are Ex. RD, Ex. RE and Ex. RF which had been duly signed by him. There is no evidence, whatsoever on record, which could show that these documents are manufactured one as argued by the Ld. Counsel for the petitioner. In the statement of the petitioner, as PW1, it has come that he had completed 240 days in the calendar year preceding his termination. In the statement of RW1, this fact has not been contradicted. Moreover, from the contracts aforesaid, it is further highlighted that in the twelve calendar months preceding his termination, the petitioner had completed 240 working days. The question which now arises, is whether the respondent was required to comply with the provisions of section 25F of the Industrial Disputes Act, 1947 before terminating the services of the petitioner. On the record, it has been proved that the services of the petitioner had been engaged on temporary basis for a period of 85 days as per each contract, the terms and conditions of which were to this effect that on the completion of period, his (petitioner) services stood terminated automatically and no separate order was required to be passed. It has been held in **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors** that:-

“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

In case laws titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 S.C.** and **Municipal Council Samrala V. Sukhwinder Kaur reported in 2006 LLR 1009 SC.** it was held that:

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no

retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months."

that:- *It was also held in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.*

"Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post."

The Hon'ble Supreme Court in 2006 (2) SCC 794 in case titled as *Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.* has held that:-

"If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law."

13. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can be safely concluded that the petitioner had been appointed on seasonal/temporary contracts, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and that his case falls within exception as under section 2(oo)(bb) of the Act. Consequently, the petitioner fails to prove this issue, to which my answer is in 'No'.

Issue No.2

14. Since the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue No. 3

15. At the time of arguments, the Ld. Counsel for the respondent could not show as to why this petition, in the present form is not maintainable. Since, the reference, from the appropriate government was received in this Court for adjudication, the petitioner filed statement of claim. It is not understandable as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in 'No'.

Issue No.4

16. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.* as under:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

In view of the above cited ruling, this petition is held not to be barred by limitation. Further, the respondent has failed to show that the petitioner has no locus standi to maintain his claim. Accordingly, this issue is answered in negative.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and the same is dismissed accordingly. Consequently, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 22nd April 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 21 of 2007
Instituted on 16.3.2007.
Decided on. 12.5.2010.

Sant Ram S/o Shri Sahi Ram, R/o Village Bahaldhar, P.O Pulbahal, Tehsil Chopal, District Shimla, HP.

..Petitioner.

VS.

The Divisional Forest Officer, Forest Division Chopal, District Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Peeyush Verma, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the action of the Divisional forest Officer, Forest Division Chopal, District Shimla, HP to give break in service period time and again and finally terminated w.e.f. 21.2.2002 without complying the provisions of the Industrial disputes Act, 1947 whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and the amount of compensation, the above aggrieved workman is entitled to?"

2. In nutshell, the case of the petitioner, is that, he had been engaged as daily wages Chowkidar, somewhere in the month of June/July, 1998 and as such worked in forest nursery, village Bhaila, Tehsil Chopal District Shimla, continuously till 31.7.2001 when his services were orally terminated by forest guard of the beat concerned. He had also not been paid salary/wages for the period 21.4.1999 to 20.5.1999, 21.6.2000 to 20.7.2000, 21.8.2000 to 20.9.2000, 21.10.2000 to 20.11.2000 and 1.1.2001 to 31.7.2001, despite the fact that during the said period, he remained on duty as Chowkidar at the said forest. Before terminating his services, neither any show cause notice was issued nor he was charge sheeted. It is averred that, his termination/retranchment from service is illegal and arbitrary and that he is required to be reinstated in service alongwith all consequential benefits.

3. The claim has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been pleaded that the petitioner had been engaged as daily wage worker w.e.f. 21.12.1998 and not as alleged by the petitioner i.e. w.e.f. June/July, 1998. In fact, he had been engaged as casual/temporary worker to do work in "Sanji Van Yojna" as per availability of the budget for the same. It has been denied that his services had been terminated on 21.7.2001. For the period, he had worked on daily wages, with the department, he had been paid the wages. Since, he had not worked during the periods as alleged by the petitioner, he was not paid the wages. It is further averred that he had remained on nursery work upto 20.6.2000. Vide notice dated 21.7.2000, he was informed regarding the completion of nursery work being run under "Sanji Van Yojna". Ultimately, on 6.12.2002, he refused to work on seasonal/occasional works by demanding regular work which was not possible, since, the nursery work in "Sanji Van Yojna" had been completed. It has been specifically denied that the respondent had engaged any junior daily wagger on any continuous work, except seasonal one. Other allegations denied.

4. The pleading of the parties, gave rise to the following issues, which were struck on 17.11.2007.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of ID Act, 1947? If so, its effect?

.....OPP

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

.....OPP

3. Whether the present reference is not maintainable?

.....OPR

4. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No
Issue No.2	become redundant.
Issue No.3	No.
Relief.	Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

7. It has been urged on behalf of the petitioner that since his services were terminated, orally, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred s Act), and further that the juniors have been retained/engaged, his termination is illegal and arbitrary and that the petitioner is required to be reinstated by also paying the back wages as well as the wages which had not been paid to him for the periods, he had worked with the department.

8. On the contrary, it has been submitted on behalf of the respondent that the petitioner had been engaged on daily wages in order to do casual/temporary, specific work under "Sanji Van Yojana" as per the availability of the budget. The periods, for which he had worked, the wages were also paid to him. Ld. Dy. DA further submitted that even by way of notice dated 1.7.2000, he had been informed regarding the completion of nursery work under "Sanji Van Yojan". Despite that notice, he was engaged on daily wages as per the availability of the work. Lastly, he had worked w.e.f 21.1.2002 to 20.2.2002. Thereafter, he refused to do work as casual/temporary worker after 6.12.2002 by making a demand to do only regular work.

9. In the claim petition, it has been mentioned that the petitioner had been engaged as daily wage chowkidar somewhere in the month of June/July, 1998 and that his services were orally terminated on 31.7.2001. His contention is further to this effect that he had also not been paid the wages for the periods as mentioned above, despite the fact that he had done work.

10. Ex. PA, is the detail, in respect of the attendance of petitioner, which goes to show that initially his services, as daily wager, had been engaged w.e.f. 21.12.1998 to 7.1.1999. From this document, it is borne out that lastly, he had worked w.e.f. 21.1.2002 to 20.2.2002. There is also a mention in this letter that for the periods, the petitioner had worked as daily wager, the wages were paid to him as per vouchers. The period, for which he had not worked, no wages were paid.

11. On the face of this document, the assertion of the petitioner that his services had been orally terminated on 1.7.2001 gets falsified. Similarly, this document negatives his plea that he had not been paid wages for the periods as mentioned above. It is quite clear that during the periods, he had worked as daily wager, the wages were paid to him as per vouchers, the numbers of which, have been mentioned in Ex. PA. Although, in the statement of petitioner (PW-1), it has come that he had completed 240 days in every calendar year preceding his termination but his such version does not get support from Ex. PA. It is to be noted that even in his claim petition, he has not alleged that in the twelve months preceding his termination, he had completed 240 days.

12. It has been stated by Shri Amar Dass (RW-1) that the mandays chart of the petitioner, is correct as per the original record. His version further goes to show that the petitioner had continued as daily wager till 20.2.2002 in order to do seasonal nursery work subject to availability of funds. Notice dated 21.7.2000 had been served upon him which was issued by B.O Bhaila, regarding his (petitioner's) termination but despite that, he was reengaged to do work. Due to paucity of funds, the nursery was closed. The petitioner had not approached the respondent for his reengagement after 20.2.2002. He denied that the petitioner had completed 240 days in twelve calendar months preceding his termination.

13. From the documentary evidence on record, particularly Ex. PA, mandays chart of the petitioner, on which reliance has been placed by him, it stands duly established that the petitioner had not completed 240 days in the twelve

calendar months preceding his alleged termination. The requirements of section 25F were to be complied with, if he had proved on record, that, he had completed 240 days in the preceding twelve months from the date of his termination i.e. 20.2.2002. At this stage, it is also to be observed that from Ex. PA, the defence version to this effect that the services of the petitioner were being engaged to do casual/seasonal work under "Sanji Van Yojna" gets substantiated.

14. The another ground on which, the petitioner has assailed his alleged termination, to be illegal, is that, juniors to him have either been retained in service or they were engaged, when his services were terminated. Although, in the petition, he has not mentioned the names of such juniors allegedly retained/engaged by the respondent but while appearing in the witness box as PW-1, he has given their names as S/Shri Jagat Ram, Dalip Singh, Nihal Singh and Smt. Kawnla Devi. His such version has been challenged by the respondent in his cross examination. In the statement of Shri Amar Dass (RW-1), it has come that S/Shri Dalip, Nihal Singh and Smt. Kaula Devi are senior to the petitioner, who had been engaged in Jan./Feb. 1998. In the cross examination, he has denied that the aforesaid are junior to the petitioner.

15. Since, the petitioner has alleged that the aforesaid persons, who are junior to him, have been retained/engaged in service, the onus was upon him, to prove this fact, either by way of documentary evidence or by examining the said persons as his witnesses. Neither, any of the said persons have been examined by him in support of his assertion that they are junior to him nor he took any steps to get the record pertaining to their engagements as daily wagers, produced in the Court. It has been specifically stated by RW-1 (Amar Dass), that S/Shri Dalip, Nihal Singh and Smt. Kaula Devi are senior to the petitioner.

16. Moreover, from the evidence on record, it is quite clear that the petitioner had been reengaged as daily wager for different periods, after his services were allegedly terminated on 31.7.2001. Shri Amar Dass (RW-1), has specifically stated that after 20.2.2002, the petitioner never approached the respondent for his reengagement. This evidence goes to show that the respondent was ready and willing to reengage the petitioner to do casual/seasonal work as and when the same was available but the petitioner was not inclined to do such work. In these circumstances, the petitioner also fails to prove the violation of the provisions of section 25G & 25H of the Act. I, disagree with the contention of the Ld. Counsel for the petitioner that his services had been illegally terminated, without complying with the provisions of Act. Accordingly, my answer to his issue is in "No".

Issue No.2

17. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No.3

18. The reference, which has been made to this Court, is required to be answered. For the respondent, it could not be shown that as to why this reference is not maintainable. Accordingly, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 12th May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 26 of 2008
Instituted on 9.5.2008.
Decided on. 18.5.2010.

Krishan Singh S/o Shri Sahu Ram, R/o Village Kalgaon, P.O Pujali no.2, Tehsil Rohroo, District Shimla, HP.

..Petitioner.

VS.

The Divisional Manager, Forest Working Division, Sarswati Nagar (Sawra) P.O Hatkoti, District Shimla, H.P.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri P.P Chauhan, Advocate.
For respondent: Shri Kunal Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Krishan Singh S/o Shri Sahu Ram workman by the Divisional Manager, Forest Working Division, Sarswati Nagar (Sawra), P.O Hatkoti, District Shimla, HP w.e.f. 30.5.1999 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. In brief, the case of the petitioner is that on 28.4.1998, he was engaged as daily wage cleaner by the respondent, initially with Truck no. HIS 1166. To the best of his abilities, he performed his duties. On 29.5.1999, his services were terminated, orally without assigning any reason. It is alleged that he had completed 240 days before his termination. Since, the Truck, aforesaid, in which he was a cleaner, met with an accident, he sustained injuries during the course of employment and remained under treatment in Government Hospital, Rampur. The injuries, sustained by him, in the accident, resulted in his partial permanent disability. Besides, discharging duties as a cleaner, he also used to work as Chowkidar. He had also filed an O.A no. 1816/2000 before the HP State Tribunal but the same was disposed of on 8.3.2006 for want of jurisdiction with liberty to approach appropriate forum. Since, his services had been terminated in violations of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reengaged in service with all consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability. On merits, it has been asserted that in the year 1999, the petitioner had only completed 122 days upto May, 1999. With the accident of Truck no. HIS 1166, the services of the petitioner, as daily wage cleaner, were rendered surplus. It has been denied that he suffered permanent disability. After the accident, the services of the petitioner were lastly engaged as daily wage chowkidar, on temporary basis, for want of sanctioned post. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations, by denying those of the respondent.

5. Pleadings of the parties gave arise to the following issues which were struck on 12.5.2009.

1. Whether the termination of services of Shri Kishan Singh petitioner by eh Divisional Manafer, Forest Working Division Sarswati Nagar (sawra) district Shimla w.e.f. 30.5.1999 without complying with the provisions of Industrial Disputes Act, 1947 and having retained the junior is improper and unjustified as alleged ?

.....OPP

2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to?

.....OPP

3. Relief.

6. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement, with seniority and continuity, in service but without back wages.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. In his affidavit, Ex. PA, the petitioner (PW-1) has supported all the material facts on oath. In cross examination, he denied of not having completed 240 days in a calendar year preceding his termination.

9. The evidence of Shri H.C Bhardwaj (RW-1), is to this effect that except the year 1998, the petitioner had not worked for 240 days in any calendar year. In the cross examination, he admitted the mandays chart, Ex. PR/A, to be correct as per the original and that the petitioner had not been issued any notice or paid compensation.

10. From Ex. RP/A, mandays chart, it stands duly proved that the petitioner had completed more than 240 days in twelve calendar months preceding his termination. It has been admitted by RW-1 (H.C Bhardwaj) that the petitioner had not been issued any notice or paid compensation before his services were terminated. As the petitioner has succeeded in proving that before his termination, he had completed 240 days in preceding twelve calendar months, the respondent was under legal obligation to have complied with the provisions of section 25F of the Act. Since, they failed to comply with the provisions of this section, the termination of the petitioner w.e.f. 30.5.1999 is illegal and unjustified.

11. Although, the reference, made to this court, is also to this effect that juniors to the petitioner have been retained in service and for this reason, his termination is against the provisions of the Act but neither in the statement of claim, the name of any such persons have been mentioned nor any such question was put to RW-1 (H.C Bhardwaj) in his cross examination. In this way, the petitioner fails to establish that his termination is illegal/unjustified for the reason that juniors to him have been engaged/retained in service. Consequently, my answer to this issue is in "Yes" accordingly.

Issue No.2

12. Before his (petitioner) termination, the petitioner had remained in job with the respondent for a short period of about one year. In this way, by giving due regard to this fact and also other circumstances, particularly, that the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against provisions of section 25F of the Act, he is entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in "Yes" accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 30.5.1999. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 54 of 2005
Instituted on 20.6.2005.
Decided on. 18.5.2010.

1. Bhaga Ram S/o Shri Ram Krishan R/o Majra Mehtab, P.O Kalka, District Panchkula, Haryana.
2. Achro Ram S/o Shri Jia Ram R/o Village Tagra Shhu, P.O Kava, District Panchkula, Haryana.

..Petitioners.

VS.

1. The Secretary, HPSEB Kumar House, Shimla-171004.
2. The Executive Engineer, HPSEB Ganvi Construction Division, Jeori, Rampur Bushehr, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.
For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of (Shri Bhaga Ram S/o Shri Ram Krishan and Shri Achro Ram S/o Shri Jia Ram workmen by the 1. Secretary, HPSEB Kumar House, Shimla 171004. 2. The Executive Engineer, HPSEB, Ganvi Construction Division, Jeori, Rampur Bushehr, District Shimla HP w.e.f. May, 1992 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?"

2. Consequent upon the receipt of reference in this Court, aforesaid Bhaga Ram (hereinafter referred petitioner no.1) & Achro Ram (petitioner no. 2), filed statement of claim. Briefly stated facts are that, on 26.1.1987, the petitioners were initially appointed as beldars by the respondents and worked, as such, in the office of Central Store Division NJPC Parwanoo controlled by the Executive Engineer, HPSEB Parwanoo. On 26.2.1992, when they had completed five years of service, they were transferred from the said store to the office of Executive Engineer, Baspa, Investigation Division, HPSEB Jeori, now known as Ganvi Construction Division, HPSEB Jeori where they joined on 27.2.1992. It is alleged that without assigning any reason, their services were terminated w.e.f. June 1992 by telling that soon they would be called back for job. In this way, the respondent terminated the services of the petitioners without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act) despite the fact that they had completed 240 days in a calendar year and also in utter violation of the Standing Orders, framed under the Industrial Employment (Standing Orders), 1946. Further, despite repeated assurance for their reengagement, the needful was not done. On the contrary, the respondents engaged new persons in violation of the provisions of sections 25G & H of the Act. Thus, they deserve to be reinstated with all consequential benefits.

4. The respondents have contested the claim of the petitioners, on having raised preliminary objections qua maintainability, estoppel and delay and laches. On merits, it has been admitted that they, (aforesaid petitioners) had joined their duties on 27.2.1992 at Ganvi Construction Division, Jeori after transfer from Parwanoo. Both these petitioners had worked there upto May, 1992 and thereafter, they left the job on their own without any intimation to the Incharge of works as well Assistant Engineer, Investigation Sub Division, Rampur. When they did not resume their duties, a notice was issued to them to resume duties but they failed to do the needful. In these circumstances, the respondent was left with no other alternative but to terminate their services vide order dated 2.7.1994, from the date when they left the job. It has been denied that the aforesaid petitioners had been assured to be reinstated and that juniors to them have either been retained in service or engaged.

5. By filing rejoinder, the aforesaid petitioners have reiterated their own allegations, by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 23.12.2005.

1. Whether the services of the petitioners have been wrongly terminated by respondent w.e.f May, 1992? If so, its effect?
..OPP
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioners are entitled to?
..OPP
3. Whether the petition in the present form is not maintainable?
..OPR
4. Whether the petitioners are estopped from filing the present petition due to their own acts, conduct and deeds?
..OPR
5. Relief.

7. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement, with seniority and continuity, in service but without back wages.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered in favour of the petitioners and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No.1

9. Admittedly, the petitioners had been appointed as daily wage beldars at Parwanoo and later on, in the year, 1992, they were transferred to Ghanvi. Since, they had come on transfer, their previous service has to be considered while calculating 240 days in preceding twelve calendar months from the date of their termination. I may observe that it is not the defence version that the petitioners had not completed 240 days prior to their termination. As per the respondents, the petitioners had abandoned their job by not resuming duties.

10. It is to be noted that from the overwhelming evidence led by the petitioners, it stands duly established that they had not abandoned their jobs and also that in twelve calendar months preceding their termination, they had completed 240 days. They have also led evidence to the effect that S/Shri Hans Raj & Dharam Pal, juniors to them, are still working with the respondents. This fact has also been admitted by the aforesaid juniors in their chief examination when appearing in the witness box as PW-5 & PW-6, that they had been engaged on 1.5.1996 and 23.4.1989 respectively. As far as petitioners are concerned, they had been engaged on 26.1.1987. Meaning thereby that juniors to them are still in job.

11. Even, Shri Manoj Kumar (RW-1) has not denied this fact that the petitioners have not completed 240 days in each calendar year till they worked with the respondent. He further expressed his ignorance that junior persons S/Shri Hans Raj & Dharam Pal were engaged by the respondent board and that they are still working. The petitioners had neither been issued any notice nor paid compensation. The work which was being done by the petitioners, is still available.

12. From the evidence, which has been referred to above, it stands duly proved that the petitioners had not abandoned their job. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:- "*Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.*"

13. It also stands proved on record that juniors to the petitioners had been engaged and that they are still in job. Moreover, I would like to mention that the respondents have not led any documentary evidence which could go to show that notice had been issued to the petitioners, calling upon them to resume their duties. It has been stated by Shri

Manoj Kumar, RW-1 that no such proof, in this regard, can be shown that any notice had been issued to the petitioners. In this way, I accept the argument, addressed on behalf of the petitioners that their services had been terminated in utter violation of the provisions of the Act. Consequently, my answer to this issue is in "Yes" accordingly.

Issue No. 2

14. Before their termination, the petitioners had not approached the respondents, in writing, for their reinstatement. In this way, by giving due regard to above mentioned facts and circumstances, particularly, that the petitioners have failed to prove that they have not been gainfully employed after their termination, I without hesitation hold that they are not entitled for back wages. However, since their services were terminated against the provisions of section 25F of the Act, they are entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3

13. There is nothing on record which may show as to why this petition is not maintainable. Since, pursuance to the reference made to this Court, the petitioner have filed the statement of claim, the same is held to be maintainable because this court is required to answer the reference. Thus, my answer to this issue is in "No".

Issue No. 4

14. No evidence has been led to prove this issue. Even from the reply, which has been filed by the respondent, it is not revealed as to how the petitioners are estopped from filing this petition. Thus, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is allowed and it is ordered that they (petitioners) be reinstated in service, with seniority and continuity but without back wages, from the date of their termination i.e May, 1992. Consequently, my answer to the reference stands answered in favour of the petitioners and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 55 of 2003
Instituted on 5.3.2003.
Decided on. 31.5.2010.

Sohan Singh S/o Shri Amar Singh R/o Village Karuana, Tehsil Nahagarh, District Solan, HP.

..Petitioner.

VS.

1. The Secretary, HPSEB Shimla.
2. The Executive Engineer, HPSEB (E) Division, Parwanoo, District Solan.
3. SDO HPSEB (E) Sub Division Barotiwala, District Solan, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Virender Singh, Advocate.
For respondent: Ms. Shilpa Sood, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of the services of Shri Sohan Singh S/o Shri Amar Singh daily wages beldar by the Executive Engineer, HPSEB Division, Parwanoo, District Solan, HP w.e.f. July, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief, the aggrieved workman is entitled to?"

2. Facts of the case as highlighted from the statement of claim filed by the petitioner through his counsel Shri Virender Singh, Advocate, are to the following effect:

In the year, 1993, the petitioner was engaged as beldar by respondent no.3 in the electrical section at Baddi where he continued as such till 1.1.2000, on which date his services were orally terminated by respondent no.3. Before his termination, the petitioner had completed 240 days in the twelve preceding months. Before terminating his services, neither any notice was issued nor he was paid any compensation. Even, he was not afforded any opportunity of being heard and for this reason, he deserves to be reinstated in service alongwith all consequential benefits.

3. By raising preliminary objections qua bad for non joinder of necessary parties and that also on account of delay and latches, the petition has been contested on merits, by asserting that the petitioner had been engaged as daily wage beldar w.e.f. 26.4.1996 and worked as such till 26.6.1996 when, on his own, he left the job. After the lapse of about five months, he was reengaged on his request w.e.f. 26.11.1996 and worked till 25.12.1996, when he again left the job on his own. It is further asserted that his services were never terminated but he himself absented from duty. Thus, there is no question of his service having being terminated in violation of the provisions of the Industrial Disputes Act, 1947, (hereinafter referred Act). Moreover, before abandoning the job, the petitioner had never completed 240 days. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were struck on 4.7.2006.

1. Whether the services of the petitioner have been illegally terminated without complying the provisions of I.D Act, 1947? If so, its effect?OPP
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?OPP
3. Whether the petition is bad for non joinder of necessary parties and that there is no cause of action?OPR
4. Whether the petition is barred by limitation? ...OPR.
5. Relief.

6. **It is pertinent to mention that the evidence of the petitioner had been closed as per order dated 31.5.2010 of this Court for the detailed reasons, narrated therein.**

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Becomes redundant.
Issue No.3	No.
Issue No.4	No.
Relief.	Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

9. It has been alleged that the services of the petitioner had been engaged by respondent no.3 in the year 1993 and that before his termination (1.1.2000), he had completed 240 days in the twelve preceding calendar months. At this stage, I may mention that as per the defence version, the services of the petitioner had been engaged on daily wage basis w.e.f. 26.4.1996 and that on his own, he left the job w.e.f. 26.6.1996. Later on, on his request, he was again reengaged w.e.f. 26.12.1996.

10. The petitioner has not produced any such documentary evidence which could go to show that his services had been engaged in the year 1993. On the contrary, the respondents have brought on record the mandays chart (Annexure R-1) which duly goes to support the defence version. At this stage, I would also like to point out that in support of the facts, stated in the reply, Er. Surya Kant, Superintending Engineer has also filed his affidavit. From his affidavit, it stands proved that the petitioner had been engaged as beldar on daily wage, in two spells, as stated above and that on his own, he had left the job on both the occasions.

11. Although the contention of the petitioner is to have completed 240 days in the twelve calendar months preceding his alleged termination (w.e.f. 1.1.2000) but he has failed to prove this fact either by way of oral or documentary evidence. On the contrary, from the mandays chart (annexure R-1), the respondents have succeeded in showing that in all, the petitioner had worked only for 91 days in the calendar year, 1996. Thus, for want of oral as well as documentary evidence, on record, the petitioner has miserably failed to prove that before his alleged termination, he had completed 240 days. The respondent were required to comply with the provisions of section 25F of the Act only if the petitioner would have succeeded in proving that before his termination, he had completed 240 days. I may further like to point out that since, the petitioner has not come before this Court with true facts and tried to conceal material facts regarding his having being engaged by the respondents, the version of the respondents that he had abandoned the job, on his own, deserves to be believed and relied upon despite the fact that on this score, no evidence has come from the side of the respondent. In fact, there is no issue, framed by this Court, that the petitioner had abandoned the job on his own, which was required to be proved by the respondent. Further, his alleged termination has not been assailed/challenged by the petitioner on the ground that his juniors have been engaged/retained in service. For want of such plea, the alleged termination of the petitioner cannot be said to be in violation of the provisions of section 25G & H of the Act. Consequently, for my above discussion, I hold that the alleged termination of the services of the petitioner is not in violation of the provisions of the Act. Accordingly, my answer to this issue is in "No".

Issue No. 2

12. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No. 3

13. Although, an objection has been taken by the respondents that this petition is bad for non joinder of necessary parties but it has not been explained as to who are the necessary parties to be impleaded in this case/petition. The services of the petitioner had been engaged by respondent no.3 who has been impleaded as one of the respondents in this petition. For the failure of the respondent to show as to how this petition is bad for non joinder of necessary parties, I hold it not to be bad on this account. Accordingly, my answer to this issue is in "No".

Issue No. 4

14. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. as under:-*

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

In view of the above cited ruling, this petition is held not to be barred by limitation. Accordingly, this issue is answered in negative.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 31st May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref.56/2004

The President. /General Secretary, Raja forgings Workers Union V/s Management

06.05.2010

Present: Sh. J.C. Bhardwaj AR for the petitioner.
Sh. Rahul Mahajan, Advocate for respondent with Sh. Kulwant Singh,
Manager, HR.

As per separate statement of Sh. J.C. Bhardwaj, Ld. AR for the petitioners which has also been admitted to the correct and acceptable by Sh. Rahul Mahajan, Advocate for respondent, the dispute between the parties stands already settled, out of court, as per settlement Ex-PA.

I am satisfied from the settlement Ex-PA and the statements made by Sh. J.C. Bhardwaj, AR for petitioner and Sh. Rahul Mahajan, Advocate for respondent that the dispute between the parties stands settled in terms of settlement Ex.PA. Consequently, the claim stands disposed of as having been settled with the result, the reference is answered accordingly. Let a copy of this order be sent to appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced.
06.05.2010

Presiding Judge,
Labour Court, Shimla.

Ref.60/2008

SH KAMAL DEV V/S D.F.O. KHALINI

29.5.2010: -

Present: - Sh. J.R. Sharma Advocate for the Petitioner.
Sh. Sandeep Attri, Ld,DDA for respondent with Sh. Susheel Kumar,
Dy. Ranger.

In view of the statement of the petitioner, recorded separately, the claim petition stands dismissed as withdrawn for having been compromised. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
29.5.2010.

Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 66 of 2003
Instituted 27.2.2003.
Decided on. 24.5.2010.

Bhopal Singh S/o Shri Kishan Singh C/o Shri Raj Kumar Swaraj mazada labanawala, Baddi, Tehsil Nalagarh,
District Solan, HP.

..Petitioner.

VS.

The Managing Director M/s Surya Pharmaceuticals Ltd. Plot no. 85 Baddi, Tehsil Nalagarh, District Solan,
H.P.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Narinder Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether termination of services of Shri Bhopal Singh S/o Shri Kishan Singh workman by the Managing Director, M/s Surya Pharmaceutical Ltd. Plot no. 85, Baddi, Tehsil Nalagarh, District Solan, HP w.e.f. 11.11.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits, the aggrieved workman is entitled to?"

2. In nutshell, the case of the petitioner, is that he was employed by the respondent company on 3.1.1999 and continued till 11.11.2001, on which date, he was orally stopped from entering the gate of the company. In this way, by resorting to unfair labour practice, his services were terminated, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). It is further averred that he had completed 240 days in each calendar year. No show cause notice or chargesheet had been served upon him. Thus, he deserves to be reinstated with all the consequential benefits.

3. The claim of the petitioner has been contested on having raised preliminary objections including maintainability. On merits, it has been asserted that the petitioner had been employed only to meet the exigency of the work for two months in the year 2001 i.e. in August & September, 2001 and during this period, he remained absent. It has been denied that he had completed 240 days during the year in which he was employed. It has further been maintained that in fact, he had worked for a period of one month and for the rest of the period, for which he was engaged, he did not turn up. Further, the petitioner is gainfully employed and his services had been engaged in accordance with the provisions of section 2 (oo) (bb) of the Act.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleading of the parties gave rise to the following issues which were struck on 18.11.2005.

1. Whether the services of the petitioner were illegally terminated by the respondent w.e.f. 11.11.2001 without complying the provisions of I.D Act, 1947? If so, its effect?

...OPP

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

...OPP

3. Whether the present petition is not maintainable in view of section 2(oo) (bb) of I.D act, 1947?

...OPR

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Becomes redundant.
Issue No.3	No.
Relief.	Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. The contention of the petitioner is that he had completed 240 days in the preceding twelve calendar months from the date on which his services were terminated. As per his allegations, he had remained in service from 13.1.1999 till 11.11.2001.

9. On the contrary, the plea of the respondent is that he (petitioner) had been employed for two months in the year 2001, i.e August & September. Even, during the said period, he had remained absent and only worked for one month.

10. Before getting the provisions of section 25F of the Act applicable, the petitioner was to prove that he had completed 240 days in twelve calendar months preceding his termination. Since, the petitioner has failed to appear in the witness box, in support of such plea and also that there is no such document brought on record which could prove this fact, I, have been left with no other option but to hold that the petitioner has failed to prove that his services were illegally terminated by the respondent without complying with the provisions of the Act, including section 25F. Thus, my answer to this issue is in "No".

Issue No. 2

11. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No. 3

12. On the record, the respondent has not brought any such documents which go to show that the petitioner had been employed only for two months as alleged and that thereafter, his services were to stand dispensed with automatically. For want of such documentary proof as well as other evidence, this issue is not proved. Thus, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 24th May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 73 of 2008
Instituted on 3.12.2008.
Decided on. 11.5.2010.

Jagat Singh S/o Shri Garibu Ram R/o VPO Bhutti, Tehsil Kumarsain, District Shimla, HP.

..Petitioner.

VS.

The Divisional Manager/Regional Manager, HRTC Rampur Division, Tehsil Rampur, District Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri B.N Mehta, Advocate.
For respondent: Ms. Rita Thakur, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Jagat Singh S/o Shri Garibu Ram w.e.f. 20.4.2000, who was engaged on contract of 89 days from 1.8.1998, by the divisional manager/Regional Manager HRTC Rampur Division, Tehsil Rampur, District Shimla, HP and remaining junior workers is proper and justified? If not, what relief of service benefits including reinstatement, seniority, the above worker is entitled to?"

2. The assertion of the petitioner, as borne out from the statement of claim filed by him, is to this effect that firstly he was appointed as a daily rated beldar-cum- WSM in Upholster trade w.e.f. 10/85 to 5/86 as per separate letter. Thereafter, he was again appointed w.e.f 1.8.1998 to 28.10.1998, 3.2.1999 to 2.5.1999, 5.5.1999 to 2.8.1999, 10.5.2000 to 6.8.2000, 11.8.2000 to 7.11.2000, 9.11.2000 to 5.2.2000 and 8.2.2001 to 8.5.2001 vide separate letters. With a view to disentitle him to claim regularization in service, he had been given intentional artificial breaks in service. It is further averred that, when he was removed, as per letter dated 19.9.1998, new persons namely Shashi Pal, Dila Ram and Ram Lal were appointed on 20.8.1998, 10.8.1998 and 11.8.1998. The work of Upholster which he had been doing was of permanent nature and that in violation of the provisions of Industrial Disputes Act, 1947, (hereinafter referred as Act) his services were dispensed with in arbitrary manner. Further, the persons, who were working on daily rated basis, during 1997-98, have been conferred with the status of work charge. Since, his services were dispensed with against the provisions of the Act, he is entitled to be in service alongwith back wages w.e.f. 20.9.1998.

3. The claim of the petitioner has been contested on having raised preliminary objections including that it suffers from delay and laches. On merits, it has been stated that he (petitioner) had been engaged on contract basis as beldar-cum- WSM in Upholster trade for a specific period of 89 days on fixed remuneration of Rs. 1500/-. After the expiry of said period, he was not to be retained on the said post. As no specific order was required to be passed, there is no violation of the provisions of the Act. Further, the petitioner had not completed 240 days in any calendar year and that his services stood discontinued on the expiry of the contract. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. The following issues were framed on the pleadings of the parties on 31.8.2009.

1. Whether the termination of the services of petitioner w.e.f. 20.4.2000, who was engaged for 89 days from 1.8.1998 by the respondent and retaining junior workers is improper and unjustified as alleged?

...OPP

2. If issue no.1 is proved, to what relief of service benefits including reinstatement and seniority, the petitioner is entitled to?

...OPP

3. Whether the petitioner has no cause of action in his favour as alleged? ...OPR
4. Whether the petition suffers from delay and laches as alleged?OPR
5. Relief.
6. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Ld. Counsel for the petitioner has submitted that in order to disentitle the petitioner to claim regularization in service and further that he be not allowed to complete 240 days in a calendar year, the respondent had intentionally given artificial breaks in service despite the fact that the post against which his services were being engaged was of permanent nature. The Ld. Counsel further urged that if the work of the post had not been of permanent nature, the petitioner could not have remained in service since 1.8.1998 till the date i.e. 8.5.2001, when his services stood dispensed with. Thus, the dispensation of the services of the petitioner for want of renewal of the contract is in violation of section 25F of the Act. Ld. Counsel further submitted that even the juniors to the petitioner as per their names given in the petition and also the affidavit, which has been filed by way of evidence, have been in service. This clearly goes to show that the services of the petitioner had been terminated/dispensed with in utter violation of the provisions of the Act.

9. On the other hand, the Ld. Counsel for the respondent argued that the petitioner had been appointed on contract basis for 89 days and that his services stood automatically terminated after the expiry of the contract period. My attention was drawn towards the various contracts executed by the petitioner, as per which, he was given appointments on contractual basis for the post aforesaid. Since, the services of the petitioner had been on contract basis, there was no need for having issued notice to him as required under section 25F of the Act. Ld. Counsel further urged that the petitioner has failed to prove that any junior has been given appointment on the post which he (petitioner) was holding on contract basis. Thus, there is no violation of any of the provisions of the Act.

10. Ex. PA is the affidavit of the petitioner which he has tendered in his evidence. In this affidavit, he has supported all the facts as narrated in the petition, on oath, including that firstly he had been appointed w.e.f. 10/1985 to 5/1986 and then w.e.f. 1.8.1998 to 28.10.1998. Thereafter, he was being reappointed as per different contracts and that ultimately his services stood dispensed with on 8.5.2001 when his appointment w.e.f. 8.2.2001 to 8.5.2001 stood expired. In his cross examination, he denied that his services stood dispensed with on the completion of the work and also as per the contract, signed by him. He denied that no juniors to him have been retained/engaged by the respondent.

11. The version of Shri Santosh Kumar (RW-1) is to this effect that the petitioner had been engaged as Cushion maker on 1.8.1998 on contract basis for 89 and after giving breaks for 3/4 days, his services were being reengaged till 5.2.2001 vide Ex. RA to Ex. RG and that on 5.2.2001, his services stood disengaged. In the cross examination, he has stated that the respondent has regular work for Cushion maker. No person junior to him (petitioner) was engaged as Cushion maker after his disengagement. From time to time, other persons were being engaged for different trades as per the availability of the work.

12. The perusal of Ex. RA goes to show that the petitioner had been given appointment as workshop helper for 89 days w.e.f. 1.8.1998 till 28.10.1998 as per the terms and conditions of the contract. Thereafter, his services were reengaged as per other contracts Ex. RB to Ex. RG. From these contracts of appointment, it is abundantly clear that a job of permanent nature was available with the respondent but in order to defeat the provisions of the Act, the services of the petitioner were being reengaged on the basis of aforesaid contracts by giving him breaks of 3/4 days. It may be mentioned that preceding the date on which the services of the petitioner stood dispensed with i.e. on 8.5.2001, he had

completed more than 240 days during the period preceding twelve months. *In Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434* it has been held by the Hon'ble Supreme Court that the appointment for short period (89 days) and termination of services at the end of said period and reappointment after the gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the termination is not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Act. Para nos. 8 & 9 are relevant which are reproduced as under:

8. *“Section 2(oo) (bb) of the Industrial Disputes Act reads as under:*

“2. (oo) (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein.”

9. *The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the appellant cannot be said to be bonafide. The High Court rejected the contention raised on behalf of the appellant herein stating:*

“...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly working on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after notional break clearly falls within the ambit and scope of unfair labour practice.”

Similarly our own Hon'ble High Court in case Shri Manoj Kumar sharma Vs. HRTC & Another in CWP No. 39 of 2006 decided on 28.5.2007 has held that the intention of the management was not to engage the respondent workman for a specified period, was to defeat the rights of a workman under section 25-F of the Act, as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice.

13. In the instant case, the petitioner had been given appointments firstly w.e.f. 10/1985 to 5/1986. From the Ex. RA to Ex. RG, it stands duly proved that after gaps of 3/4 days, he was being reappointed on the basis of contracts for a period of 89 days till 5.2.2001. It is quite clear that as per contract of service, Ex. RG, the petitioner had been given appointment w.e.f. 9.11.2000 to 5.2.2001. Undoubtedly, from the aforesaid document, Ex. RG, produced by the respondent, the last appointment of the petitioner, on contract basis, was w.e.f. 9.11.2000 to 5.2.2001 but the petitioner has brought on record certificate, issued by the R.M HRTC Rampur which goes to show that he had been given appointment, on contract basis, as Cushion maker w.e.f. 8.2.2001 to 8.5.2001. This fact gets corroboration from the affidavit Ex. PA which he (petitioner) has filed in support of his evidence. Thus, it stands proved that even after giving fictional breaks, the petitioner had completed more than 240 days, in the preceding twelve months from the date on which his services stood dispensed with. In these circumstances, having regard to the evidence as discussed above and also the legal position, I have no hesitation in holding that the petitioner was being given fictional breaks by the respondent, while giving him appointments, against a post which was of permanent nature, just to defeat the provisions of section 25F of the Act. Since, it stands proved on record that he had completed more than 240 days in the preceding twelve months from the date on which his services stood dispensed with i.e. 8.5.2001, the compliance of the provisions of section 25F were required to be complied with by the respondent. For the failure of the respondent to comply with such provisions, the disengagement of the services of the petitioner was illegal.

14. The contention of the petitioner is also to this effect that his juniors have been retained/engaged in service, after his services were dispensed with. There is no evidence, whatsoever, on record led by the petitioner that the respondent had engaged/retained any other person on the post on which the services of the petitioner were being engaged from time to time as per contracts, mentioned above. In the statement of RW-1, it has come that persons have been engaged for different trades and not in the trade (WSM Upholster) where the services of the petitioner had been engaged. Thus, the petitioner fails to prove that persons junior to him have been retained/engaged by the respondent against the work for which his services had been engaged. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 2

15. Although, the petitioner is alleged to have been given appointments on contractual basis firstly w.e.f. 10/1985 to 5/1986 but his services were being engaged after some gaps, regularly w.e.f. 1.8.1998 to 8.5.2001, when his

services stood dispensed with. This shows that, for a short period he had remained in service/job. Undoubtedly, the counsel for the petitioner has submitted that the petitioner is entitled for full back wages alongwith other service benefits but I disagree with such contention, particularly, for the reason that nothing such, has been sought on record, which may go to show that when the services of the petitioner stood dispensed with, he did not remain gainfully employed. It may be mentioned that there is no such allegation in the statement of claim that when the services of the petitioner stood dispensed with, he remained not gainfully employed. Thus, he cannot be awarded, back wages. However, since his services stood dispensed with, without complying with the provisions of section 25F, he becomes entitled for seniority and continuity in service from the date of his disengagement i.e. 8.5.2001. By holding so, my answer to this issue is in "yes" accordingly.

Issue No. 3

16. Since, a reference has been made to this Court by appropriate government and in pursuance thereof, the petitioner filed statement of claim, it is not understandable as to why the petitioner has no cause of action. Moreover, at the time of arguments, it could not be shown by Counsel for the respondent, as to how the petitioner has no cause of action to maintain this petition. Thus, my answer to this issue is in "No".

Issue No. 4

17. The services of the petitioner stood disengaged on 8.5.2001. The present reference was made to this Court in the month of November, 2008. ***Incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cumprocessing Service Society Limited and Another (1999) 6 SCC 82*** it has been laid by the Hon'ble Supreme Court that if the dismissal from service is challenged belatedly, the dispute, still continue for adjudication, the only question will be to deprive back wages in such dispute. Applying, the ratio of this ruling, if the petitioner had raised the demand notice belatedly before the Labour-cum-Conciliation Officer, his claim cannot be said to be suffering from delay and laches. Accordingly, I hold that this petition does not suffer from delay and laches and my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service w.e.f. 5.2.2001 with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 11th May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref no. 75 of 2006
Instituted on 30.5.2006.
Decided on. 6.5.2010.

Rattan Lal S/o Shri Nikka Ram, through Shri Satish Kumar, Branch Secy. HP AITUC, H.Q Baddi (SBOP)
District Solan, HP.

..Petitioner.

VS.

The Managing Director, M/s Mahalaxmi Spintex Pvt. Ltd. Plot no. 118 Village Katha, Industrial Area Baddi,
Tehsil Nalagarh, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Respondent already exparte.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Rattan Lal S/o ShriNikka Ram workman by the Managing Director, M/s Mahalaxmi Spintex Pvt. Ltd. Plot no. 118 Village Katha, Industrial Area Baddi, Tehsil Nalagarh, District Solan, HP w.e.f. 14.4.2004 without complying he provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. The case of the petitioner, as is borne out, from the statement of claim filed before this Court, is to this effect that he was engaged as a fitter by the respondent company on 7.3.2003 and that he remained as such till 14.4.2004, when his services were illegally terminated, orally, without following statutory and mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). In each calendar, he worked for 240 days.

3. The respondent did not contest the claim of the petitioner, for the reason that, he was proceeded against exparte.

4. In order to lead exparte evidence, the petitioner had been offered many opportunities but he failed to lead the same and ultimately as per order dated 6.5.2010, his evidence was closed by the order of the Court.

5. The assertion of the petitioner is to this effect that he had been illegally terminated without following the mandatory provisions of the Act and that he completed 240 days in each calendar year.

6. The petitioner becomes entitled for the benefit of section 25F of the Act, only, if he proves that he had completed 240 days preceding twelve calendar months from the date of his termination. In the instant case, no oral as well documentary evidence has come on record to show that the petitioner had completed 240 days in each calendar year or during twelve preceding months from the date when his services were orally terminated. It may be observed that, although it is the case of the petitioner that his juniors are in service or engaged/retained after his termination by the respondent company but there is nothing to this effect, on record. Even, the names of juniors have not been mentioned in the petition.

7. Thus, there is no violation, proved, as far as sections 25G & H of the Act are concerned. Consequently, for my above observations, I hold that the petitioner has failed to prove that his services were illegally terminated in violation of the mandatory provisions of the Act. Thus, his claim is dismissed with the result, the reference is answered against him. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this day of 6th May 2010.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 59 of 2007
Instituted on 30.7.2007.
Decided on. 1.6.2010.

1. Amar Sinfh S/o Shri Duli Chand R/o Village Rajwai, P.O Rewag, Tehsil Sunni, District Shimla, HP.

2. Gurmail Singh S/o Shri Lajja Ram R/o Village Paploha, P.O kalka, District Panchkula, Haryana.
3. Hardev Singh S/o Shri Rattan Singh R/o Village Khatain, P.O Nayan Gram, Tehsil Kasauli, District Solan, HP.
4. Ram Lal S/o Shri Budh Ram R/o Village Tagra Kangan, P.O Kau, district Panchkula, Haryana.
5. Rattan Lal S/o Shri Sukh Ram R/o Village Dagra, hari Singh, P.O & Tehsil Kalka, District Panchkula, Haryana.

..Petitioners.

VS.

The Executive Engineer, HPSEB Ganvi Construction Division, Jeori, Rampur Bushehr, District Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of (1) Shri Pawan Kumar S/o Shri Jodha Ram, (2) Shri Gurmail Singh S/o Shri Lajja Ram, (3) Shri Hardev Singh S/o Shri Rattan Singh, (4) Shri Ram lal S/o Shri Budh Ram, (5) Shri Rattan Lal S/o Shri Sukh Ram workmen by the Executive Engineer, HPSEB, Ganvi Construction Divisoin, Jeori, Rampur Bushehr, District Shimla HP w.e.f. May, 1992 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?"

2. Consequent upon the receipt of reference in this Court, aforesaid Pawan Kumar (hereinafter referred petitioner no.1), Hardev Singh (petitioner no. 3) and Rattan Lal (petitioner no.5) filed separate statement of claims whereas no such claims were filed by Gurmail Singh and Ram Gopal whose names also find mention in the reference at serial no. 2 & 4 respectively. **Thus, by way of this award, the claim petitions which have been filed separately by the petitioners no. 1,3 & 5 are to be decided.**

3. Briefly stated facts, as highlighted from the statement of claims, are to the following effect: It has been alleged by petitioner no.1 that on 6.10.1985, he was initially appointed as daily wage beldar by the respondent and worked, as such, in the office of Central Store Division NJPC Parwanoo controlled by the Executive Engineer, HPSEB Parwanoo. On 26.2.1992, when he had completed seven years of service, he was transferred from the said store to the office of Executive Engineer, Baspa, Investigation Division, HPSEB Jeori, now known as Ganvi Construction Division, HPSEB Jeori where he joined on 27.2.1992. It is alleged that without assigning any reason, his services were terminated w.e.f. 1.6.1992 by telling that soon he would be called back for job. In this way, the respondent terminated the services of the petitioner without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act) despite the fact that he had completed 240 days in a calendar year and also in utter violation of the Standing Orders, framed under the Industrial Employment (Standing Orders), 1946. Further, despite repeated assurance for his reengagement, the needful was not done. On the contrary, the respondent engaged new persons in violation of the provisions of sections 25G & H of the Act. Thus, he deserves to be reinstated with all consequential benefits.

4. The contention of petitioner no.3 is to this effect that he had joined as daily wage beldar on 8.2.1986 and was transferred on 26.2.1992 and joined his duties on 27.2.1992, in the identical manner as referred to above, while narrating the facts of the petitioner no.1. He has also assailed his termination on the same ground as taken by petitioner No.1.

5. Petitioner no.5 was appointed as daily wage beldar on 5.12.1986 and his allegations are also identical as stated by petitioner No.1.

6. By filling separate replies, the respondent has contested the claim of the aforesaid petitioners, on having raised preliminary objections qua maintainability, estoppel and delay and latches. On merits, it has been admitted that they, (aforesaid petitioners) had joined their duties on 27.2.1992 at Ganvi Construction Division, Jeori after transfer from Parwanoo. As far as petitioner no.1 is concerned, he worked there upto 14.10.1992 and thereafter, proceeded on three days casual leave w.e.f. 15.10.1992 to 26.10.1992. However, without any intimation to the Incharge of works as

well Assistant Engineer, Investigation Sub Division, Rampur, he had not resumed his duties on 27.10.1992. Thus, he left his job on his own. When he did not resume his duties, a notice was issued to him to resume duties but he failed to do the needful. In these circumstances, the respondent was left with no other alternative but to terminate his services vide order dated 2.7.1994, from the date when he left the job.

7. Petitioner no.3 had worked upto 8.7.1993 at Baspa Investigation Division and thereafter he proceeded on three days casual leave w.e.f. 9.7.1993 to 12.7.1993 which was duly sanctioned but he did not resume his duties on 13.7.1993. Even his wages amounting to Rs. 462/- for the period 21.6.1993 to 20.7.1993, as per muster roll, were received by Shri Ram Gopal, beldar, who had been authorized to receive/collect the same.

8. Petitioner no.5, on transfer had worked upto may, 1992. He left the job on his own, without any intimation to the Incharge of works site as well as Assistant Engineer, Investigation Sub Division, Rampur and did not join his duties upto 11.4.1993 and then a notice was issued to him to resume his duties by 12.4.1993. Thus, the respondent was left with no other alternate but to terminate his services vide office order dated 2.7.1994.

9. It has been denied that the aforesaid petitioners had been assured to be reinstated and that juniors to them have either been retained in service or engaged.

10. By filing rejoinders, the aforesaid petitioners have reiterated their own allegations, by denying those of the respondent.

11. Pleadings of the parties gave rise to the following issues which were struck on 7.6.2007.

1. Whether the services of the petitioners have been illegally terminated without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP
2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to? ...OPP
3. Whether the claim is barred by limitation? ...OPR
4. Whether the petition in the present form is not maintainable? ...OPR
5. Relief. ...OPR

12. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

13. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Aforesaid petitioners are Entitled to reinstatement, with seniority and continuity, in service but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference partly answered in favour of the aforesaid petitioners and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue no.1

14. Admittedly, the petitioners were appointed as daily wage beldars at Parwanoo and later on in the year, 1992, they were transferred to Ghanvi. Since, they had come on transfer, their previous service has to be considered while calculating 240 days in preceding twelve calendar months from the date of their termination. I may observe that it is not the defence version that the petitioners had not completed 240 days prior to their termination. As per the respondent, the petitioners had abandoned their job by not resuming their duties after having proceeded on leave as stated above.

15. It is to be noted that from the overwhelming evidence led by the petitioners, it stands established that they had not abandoned their jobs and also that in twelve calendar months preceding their termination, they had completed

240 days. They have also led evidence to the effect that S/Shri Hans Raj & Dharam Pal, juniors to the petitioners, are still working with the respondent and that the work is still available with it (Board).

16. Even, Shri Manoj Kumar (RW-1) has not denied this fact that the petitioners have not completed 240 days in each calendar year till they worked with the respondent. He further expressed his ignorance that junior persons Hans Raj & Dharam Pal were engaged by the respondent board and that they are still working. The petitioners had neither been issued any notice nor paid compensation. The work which was being done by the petitioners, is still available.

17. From the evidence, which has been referred above, it stands duly proved that the petitioners had not abandoned their job. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

18. It also stands proved on record that juniors to the petitioners had been engaged and that they are still in job. Moreover, I would like to mention that the respondent has not led any documentary evidence which could go to show that notice had been issued to the petitioners, calling upon them to resume their duties. It has been stated by Shri Manoj Kumar, RW-1 that no such proof, in this regard, can be shown that any notice had been issued to the petitioners. In this way, I accept the arguments, addressed on behalf of the petitioners that their services had been terminated in utter violation of the provisions of the Act. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2

19. Before their termination, the petitioners had not approached the respondent, in writing, for their reinstatement. In this way, by giving due regard to above mentioned facts and circumstances, particularly, that the petitioners have failed to prove that they have not been gainfully employed, after their termination, I without hesitation hold that they are not entitled for back wages. However, since their services were terminated against the provisions of section 25F of the Act, they are entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3

20. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of *Hon'ble Supreme Court in a case, as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. as under:-*

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

In view of the above cited ruling, this petition is held not to be barred by limitation. Accordingly, this issue is answered in negative.

Issue No. 4

21. There is nothing on record which may show as to why this petition is not maintainable. Since, pursuance to the reference made to this Court, the petitioners had filed the statement of claim, the same is held to be maintainable because this court is required to answer the reference. Thus, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioners no. 1,3 &5 is allowed and it is ordered that they(petitioners) be reinstated in service, with seniority and continuity but without back wages, from the date of their termination i.e May, 1992. **As far as Gurmail Singh & Rattan Singh, petitioners no. 2 &4, whose names as find mention in the reference, are concerned, my answer to the reference is against them for the reason that despite having been served with notices, they did not file any claim.** Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th May, 2010 in the presence of parties counsels.

(Parveen)

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 125 of 2003
Instituted on 26.4.2003
Decided on. 11.5.2010

Nain Sukh S/o Shri Sohanu Ram R/o Village & P.O Bhutti, Tehsil Kumarsain, District Shimla, HP.
..Petitioner.

VS.

The Managing Director, HP State Cooperative Marketing and Consumers Federation Ltd. Shimla, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri B.N Mehta, Advocate.

For respondent: Shri P.P Chauhan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Nain Sukh S/o Shri Sohanu Ram, daily wages peon by the Managing Director, HP State Cooperative Marketing and Consumer Federation Ltd., Shimla w.e.f. 21.1.1995 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what service benefits and relief aggrieved workman is entitled to?"

2. The assertion of the petitioner, as borne out from the separate claim, filed by him, is to this effect that his services, as Peon-cum-Chowkidar, were absorbed by respondent Federation, having its Bottling Plant at Parwanoo, against class-IV post and that he was transferred to the office of Area Manager Himfed Nahan, vide letter dated 17.2.1992 where he joined his duties on 25.7.1992. Thereafter, vide letter dated 10.8.1992, he was directed to join at Thanadhar to assist the Store Keeper, Himfed there. Later on, the authorities of respondent Federation, directed him to take over the charge of Store Keeper at Thanadhar from Shri Chattar Singh vide letter dated 7.12.1992 and in consequence thereof, he took over the charge on 10.12.1992. Vide Telegram no. 4955 dated 13.7.1994, he was directed to handover the charge to Shri Roshan Lal and to join duties at Bottling Plant, Parwanoo by 27.7.1994 failing which his services were liable to be dispensed with. It is averred that he could not join his duties at Bottling Plant Parwanoo due to the reason that his father was ill and remained hospitalized for a considerable period and that it was not possible for him (petitioner) to leave him alone (father). Without affording him any opportunity, of being heard as well as conducting enquiry, his services were terminated vide letter dated 21.1.1995 despite the fact that he had also made representations dated 25.6.1994 and 24.9.1994 stating therein that he was unable to join in view of the facts, aforesaid. The complete medical history of his ailing father was submitted to the respondent but the same was not considered at all. Although he (petitioner) had worked for eight years and in each calendar year, he worked for more than 240 days, his services were terminated in a slipshod manner. Thereafter, the respondent engaged fresh person and retained the workers who were junior to him. It is also asserted that his transfer had been ordered as punishment, against the rules and service jurisprudence because his work and conduct was upto the mark.

3. The claim of the petitioner has been resisted on having raised preliminary objections qua limitation and estoppel. On merits, it has been stated that the petitioner had been initially engaged purely on daily wages basis as Supervisor to supervise the work of World Bank Storage Project. When the Project came to an end, the services of the

daily wages were required to be terminated. However, by taking a lenient view, all the supervisors were asked to give their option to work against the post of Peon-cum-Chowkidar. Since, the petitioner had given such option, he was posted in the office of Area Manager, Himfed Nahan purely on daily wages basis. On 12.8.1992, he (petitioner) joined his duties at Thanadhar and thereafter he was transferred to Parwanoo vide order dated 2.6.1994. Telephonically as well as by post, he was directed to handover the complete charge to Roshan Lal but he refused to do the needful as is evident from the letter dated 23.6.1994 addressed by Shri Roshan Lal, Junior Medical Assistant to Area Manager, Himfed Shimla. Thereafter, when the charge was handed over by the petitioner to Shri Pradeep Chauhan storekeeper, it was found that he had committed shortage of Rs. 98,550/- qua which recovery proceedings are in progress against him. Regarding the ailment of his father, no proof had been supplied. At this belated stage, he cannot take this plea. On having considered all the facts available, the management took decision to terminate the services of the petitioner.

4. Since, the petitioner did not file rejoinder despite having been afforded opportunities, the following issues were framed on 21.2.2006.

1. Whether the services of the petitioner have been wrongly terminated by the respondent w.e.f. 21.1.1995? If so, its effect? .OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? .OPP.
3. Whether the petition is barred by limitation and the petitioner is estopped from filing the present petition? .OPR.
4. Relief.

5. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 : Yes.

Issue No.2 : Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue No.3 : No.

Relief : Reference answered in favour of the petitioner per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

7. Admittedly, the petitioner had joined the services with the respondent on 25.7.1992 in the office of Area Manager, Himfed, Nahan as per letter dated 17.2.1992. It is also not in dispute that he (petitioner) had remained in service till 21.1.1995, when his services were terminated. It is to be noted that the contention of the petitioner, that he had completed 240 days in the preceding twelve calendar months from the date of his termination, has also gone unchallenged. In other words, it can be said that there is no such plea taken by the respondent that the petitioner had not completed 240 days during the period, preceding twelve calendar months from the date of his termination. The only contention of the respondent is to this effect that since the petitioner had failed to join his duties at Bottling Plant, Parwanoo, pursuant to telegram no. 4955 dated 13.7.1995 and also that when he handed over the charge to one Shri Pradeep Chauhan, Store Keeper, it was found that he had committed shortage to the tune of Rs. 98,550/- qua which the recovery proceedings are in progress against him, his services were terminated vide letter dated 21.1.1995.

8. The petitioner (PW-1) in his affidavit, Ex. PA has supported all the facts, as made in the claim petition, on oath. In the cross examination, he admitted that vide letter Ex. RB, he had been transferred from Thanadhar to Parwanoo but did not join there. He further admitted that arbitration proceedings are pending before Registrar Co-operative Societies and he has already paid Rs. 1100/-. He expressed his inability to remember that the respondent had also made some recovery from his wages.

9. Ex. RA, is the affidavit of Shri Ramesh Bhaik (RW-1). In the cross examination, he has admitted that no notice or compensation was paid to the petitioner. He denied that he (petitioner) had sent application for leave. Before his termination, no domestic enquiry was conducted and that juniors to the petitioner are still in job.

10. From the stand, which has been taken by the respondent, it appears that the petitioner had abandoned his job because he did not join at Parwanoo, on having been transferred from Thanadhar. The petitioner had also been directed to join at Parwanoo by 21.7.1994 failing which his services were to be terminated. If, the petitioner had willfully disobeyed the directions of the respondent and thereby committed misconduct, it was required by the respondent to have got conducted domestic enquiry against him for such misconduct. In the instant case, no such enquiry was got conducted. Further, the provisions of the Act were required to be complied with when it stood proved, on record, that the petitioner had completed 240 days in the preceding twelve calendar months from the date of his termination. For the failure of the respondent to have complied with the provisions of section 25F of the Act, the termination of the petitioner as per letter dated 21.1.1995 is illegal and unjustified. In the statement of Shri Ramesh Bhaik (RW-1) it has also come, on record, that juniors to the petitioner are still in job. Thus, there is also violation of the section 25G of the Act. I agree with the contention of the Ld. Counsel for the petitioner that without conducting domestic enquiry and also in utter violation of the provisions of the Act, the services of the petitioner were terminated by the respondent vide letter dated 21.1.1995. There is no substance in the plea of the Ld. Counsel for the respondent that since, the petitioner had abandoned his job by not joining at the place of his posting, (Parwanoo) where he was transferred, there was no legal necessity for the respondent to have either issued notice and pay retrenchment compensation to the petitioner, as per section 25F of the Act, or to have ordered the initiation of domestic enquiry against him. Consequently, my answer to this issue is in "Yes".

Issue No. 2:

11. In the claim petition, it has not been mentioned by the petitioner that he is not gainfully employed. Similarly, his evidence, by way of affidavit Ex. PA, also does not go to show that he is unemployed and not doing any job. In order to claim back wages, it was required of the petitioner to have pleaded and established that after his termination from service, he has not been gainfully employed. It may be noted that although the services of the petitioner were terminated on 21.1.1995 but the reference was made to this Court on 23.4.2003. The evidence is silent in order to show as to in which year, the petitioner had raised the demand notice before the Conciliation Officer. The delay which has been made to raise a demand notice is also a circumstance which goes against the petitioner to claim back wages. Moreover, before his termination, the petitioner had remained in job with the respondent for a short period of about three years. In this way, by giving due regard to above mentioned facts and circumstances, particularly, that the petitioner has failed to prove that he has not been gainfully employed after his termination, I without hesitation hold that he is not entitled for back wages. However, since his services were terminated against provisions of the Act, he is entitled to be reinstated with seniority and continuity in service without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3:

12. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.** as under:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

In view of the above cited ruling, this petition is held not to be barred by limitation. Accordingly, this issue is answered in negative.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i. e. 21.1.1995. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 11th May, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 149 of 2006
Instituted on 18.11.2006.
Decided on. 13.5.2010.

Hari Krishan S/o Shri Bhagat Ram R/o Village Tapkari, P.O Okhro, Tehsil & District Shimla, H. P.

..Petitioner.

VS.

The Director of Industries, Udyog Bhawan, Shimla-1

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri S.S Parmar, Advocate.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Hari Krishan S/o Shri Bhagat Ram workman by the Director of Industries, Himachal Pradesh, Shimla -1 w.e.f. June, 1997 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. In nutshell, the case of the petitioner, is that he was engaged as daily wage beldar in the Industries Department in the month of Jan., 1995 and that he remained posted at Ghanahatti till 16.6.1997 on which date, he was told, verbally that his services were no longer required. In each calendar year, he had completed 240 days. It is further averred that S/Shri Tehal Dass and Bhola Dutt are still working. Besides, other juniors namely S/Shri Beasr Dutt, Manohar Lal and Het Ram are in job in Dalyara nursery. At Tatapani nursery, S/Shri Jagdish Chand and Bhoj Raj have been retained. One Shri Mahant Ram who is also junior to him (petitioner) has been working in Karsog Can. nursery. After his termination, he has also reasons to believe that fresh hands are still continuing in service. In this way, his termination by retaining/engaging juniors has been in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act) and that he deserves to be reinstated with all consequential benefits.

3. The claim of the petitioner has been contested on having raised preliminary objection qua maintainability. On merits, it has been stated that the petitioner had been engaged as casual labourer in Mulberry nursery at Bagh-ka-Nala, Ghanahatti under sericulture Division, Shimla. Due to very low survival of Mulberry, the aforesaid nursery had to be closed, which in fact had been started on experimental basis. Thus, the services of the petitioner automatically came to an end w.e.f. 16.6.1997. As far as S/Shri Tehal Dass and Bhola Dutt are concerned, they had been engaged for tassar rearing and other related works. S/Shri Manohar Lal and Het Ram were engaged at Palyar sericulture centre in District Shimla, in the year 1994. As far as S/Shri Jagdish Chand and Yog Raj are concerned, they had been engaged at Tattapani, under sericulture Division, Mandi who later on left the job in the year, 1999. Shri Mahant Ram was engaged on daily wages at Memel in the year, 1998, who is still continuing as daily wage labourer. No laborer named Shri Bhoj Raj was engaged by the department in the sericulture centre, Tattapani, District Mandi, HP. As the Mulberry nursery at Bagh-ka-Nala stood closed w.e.f. 16.6.1997, no question arises for engaging junior persons to that of the petitioner, in the said nursery. Other allegations denied.

4. By filings rejoinder, the petitioner has reiterated his own allegations, by denying those of the respondent.

5. Pleading of the parties gave arise to the following issues which were struck on 31.10.2008.
1. Whether the termination of services of Shri Hari Krishan workman by the Director of Industries, Himachal Pradesh, Shimla-1 w.e.f. June, 1997, without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged ? ..OPP.
 2. If issue no.1 is proved in affirmative, to what relief of service benefits and amount of compensation, the petitioner is entitled to? ..OPP.
 3. Whether the petition is not maintainable in the present forum as alleged? ..OPR.
 4. Relief.
6. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.
- Issue No.1 : Yes.
- Issue No.2 : Entitled to reinstatement, with seniority and continuity, in service but without back wages.
- Issue No.3 : No.
- Relief. : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. The petitioner has challenged his termination on two grounds namely that he had not been given any notice and compensation and also that juniors to him have either been engaged or retained in job after his termination.

9. The defence version is to this effect that the services of the petitioner had been engaged as casual/seasonal labourer and that it was co-terminus with the completion of the work. Further, assertion is to this effect that no persons, junior to the petitioner have either been engaged or retained in service as far as Baghka-Nala, Ghanahatti, under sericulture division, Shimla, is concerned.

10. Petitioner while appearing in the witness box as PW-1 has supported this fact that he had completed 240 days in every calendar year preceding his termination and that Shri Mahant Ram who was junior to him is still continuing with the respondent. By filing application under RTI Act, he had got obtained information/record, which is Ex. PA to Ex. PA-10. Without serving any notice or paying compensation, his services were terminated. In the cross examination, he denied that Mahant Ram had been engaged at Memel, District Mandi in the year, 1998 and that he (PW-1) had been engaged as casual labourer. He also denied that the Mulberry nursery at Ghanahatti, was closed on 16.9.1997 and that no juniors were engaged by the Incharge, Sericulture Division, Shimla after his disengagement.

11. Shri A.K Kulshreshta (RW-1), supports this fact that the petitioner had been engaged as casual labourer, on daily wages, in Mulberry nursery at bagh-ka-Nala, Ghanahatti and that he continued there till 5.6.1997. Since, the work of the nursery was seasonal and on experimental basis, it was closed due to very low survival of sapling, in the month of June, 1997. For this reason, the services of the petitioner and other staff, stood automatically disengaged. No junior to the petitioner was ever engaged in sericulture division, Shimla. The petitioner had also not completed 240 days in any calendar year preceding his disengagement. In the cross examination, he stated that mandays chart Ex. RA is correct as per original. Shri Mahant Ram was junior to the petitioner at Ghanahatti.

12. It has been specifically stated by the petitioner (PW-1) that he had completed 240 days in twelve calendar months preceding his disengagement. His such version gets support from Ex. RA, Mandays chart, which clearly shows that till 15.6.1997, the petitioner had worked for 166 days and from 31.12.1996 till 1.1.1996, he had completed 366 days. In this way, it is quite apparent that in the twelve calendar months, from the date of disengagement of the petitioner i.e. 15.6.1997 till 14.5.1996, he had completed 240 days.

13. Undoubtedly, the defence plea is that the services of the petitioner had been engaged in the aforesaid nursery as a casual labourer in order to do seasonal work which was on experimental basis but there is nothing on record which may go to show that when his services were engaged, it had been brought to his (petitioner) notice regarding such seasonal/temporary work which was being carried out on experimental basis. In the absence of such, the disengagement/termination of the petitioner on 15.6.1997 does not fall within the purview of section 2(oo) (bb) of the Act. On the contrary, it falls within the definition of retrenchment as per section 2(oo) of the Act. Since, the petitioner has proved on record that before his termination, the petitioner had completed 240 days in the twelve calendar preceding months, it was obligatory upon the respondent to have complied with the provisions of section 25F of the Act. It has been held by our own **Hon'ble High Court in 2008 (1) Shim. LC 513 titled Block Development Officer, Pragpur Vs. Yoginder Kumar & another** that:

“Industrial Disputes Act, 1947, section 25F. Benefits under section 25F extended. Daily wages. Plea of project employment rejected.”

Since, its requirement was not complied with, I have no hesitation in holding that the termination/disengagement of the petitioner is illegal.

14. The another contention of the petitioner is that his juniors have still been retained in service. Ex. PA-3 is the information, which had been got obtained by the petitioner under R.T.I Act. Its perusal goes to show that Bhola Dass was engaged on 22.6.1989, Shri Tehal Dass on 22.8.1989 and petitioner (Hari Krishan) on 1.1.1995. This document goes to show that nursery at Bagh-ka-Nala, Ghanahatti was closed on 16.6.1997 and that the services of Bhala Dutt and Tehal Dass were reengaged at Resham Kendra, Kuniyar. Since, both the said workers were senior to the petitioner, there is no violation of section 25G of the Act. The petitioner has not produced any evidence in order to show that S/Shri Besar Dutt, Manohar Lal and Het Ram are junior to him. Moreover, from the reply, filed by the respondent, it is quite clear that their services were engaged in the year 1994 to do work at Paliar Sericulture centre. As far as S/Shri Yog Raj and Jagdish Chand are concerned, they had been engaged at Tattapani, under sericulture division Mandi, HP as is the defence version. In the statement of petitioner (PW-1), it has come, that Mahant Ram, who is junior to him, is still continuing with the respondent. Ex. PA-2, is the information which had been sought by the petitioner under RTI Act, goes to show that before being engaged in Memel nursery, Shri Mahant Ram was working in sericulture centre at Ghanahatti under Shimla Division. From Ex. PA-1, it is revealed that Shri Mahant Ram joined as daily wager at sericulture centre, mulberry nursery at Karsog on 20.1.1998 and that he remained there upto July, 2008.

15. From the aforesaid documentary evidence which has been relied upon by the petitioner, it is quite clear that said Mahant Ram started working at Memel nursery at Karsog w.e.f. 20.1.1998. The nursery at Bagh-ka-Nala, Ghanahatti had been closed on 16.6.1997. Since, Mahant Ram had joined in a nursery at Memel, Tehsil Karsog, District Mandi, the petitioner cannot get any benefit under the provisions of Act because his (Mahant Ram) services were not engaged in same division. In other words, it can be said that his services were engaged as afresh in another division, situated in District Mandi. In this way, the petitioner also fails to establish that the services of Mahant Ram, who is junior to him, have been engaged in the same division.

16. I do not find any legal substance in the contention advanced on behalf of the respondent that since Mulberry nursery, Bagh-ka-Nala at Ghanahatti had been started on experiment basis and that for this reason, the services of the petitioner had been engaged as casual labourer, there was no need to comply with the provisions of section 25F of the Act when the said nursery stood closed on 16.7.1996. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2:

17. Before his (petitioner) termination, the petitioner had remained in job with the respondent for a short period of about two years. In this way, by giving due regard to this fact and also other circumstances, particularly, that the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3:

18. The claim of the petitioner has been stated to be not maintainable for the reason that his services had been engaged in order to do casual work and that the same was co-terminus with the completion of the work. However, this objection taken by the respondent, does not carry any legal weight. Moreover, at the time of arguments, it could not been explained, on behalf of the respondent, as to why this petition is not maintainable. Accordingly, by holding it maintainable, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e June, 1997. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 13th May, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 178 of 1999.
Instituted on 26.10.1999.
Decided on. 17.5.2010.

1. Sanjeev Kumar C/o Kangra Provision Store Kasauli Road, Kalka District Panchkula (Haryana) 133302.
 2. Mohan Lal C/o Kangra Provision Store Kasauli Road, Kalka District Panchkula (Haryana) 133302.
 3. Virender Kumar S/o Shri R.B Tiwara C/o Kangra Provision Store Kasauli Road, Kalka District Panchkula (Haryana) 133302.
 4. Tarsem Kumar S/o Shri Jai Pal R/o Village majra Mahtab, P.O kalka, District Panchkula, Haryana.
 5. Bhagwan Dass C/o Kangra Provision Store Kasauli Road, Kalka District Panchkula (Haryana) 133302.
 6. Ashish Kumar Jain S/o Shri N.K Jain, Devi Dass Road Sood Bhawan, House no.7 Kalka, District Panchkula, Haryana.
 7. Manohar Lal C/o Kangra Provision Store Kasauli Road, Kalka District Panchkula (Haryana) 133302.
- ..Petitioners.

VS.

The Managing Director, M/s Himvision Electronics, Sector-1 Parwanoo, District Solan, H.P.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rahul Mahajan, Advocate.

For respondent : None.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of S/Shri Sanjeev Kumar, Mohan Lal, Virendr Kumar, Tarsem Kumar, Bhagwan Dass, Ashish Kumar and Manohar Lal workers by the Managing Director M/s Himvision Electronics, Sector-1, Parwanoo District Solan, HP with Head office Village Pawa (Sahneqal) CT Road Ludhiana (Punjab) w.e.f. 10.2.1999 as a result of alleged lockout without paying the wages of workers for the month of Feb. 1999, without any notice is legal and justified? If not to what relief of past service benefits including back wages and amount of compensation, the above aggrieved workmen are entitled?"

2. Facts in brief are that Sanjeev Kumar (Petitioner No.1), Manohar Lal (Petitioner No.6) and Bhagwan Dass (Petitioner no.7), were appointed as Technicians by the respondent management on 20.4.1989 and were drawing monthly wages of Rs. 2950/-, 2640/- and 2950 respectively. Madan Lal (Petitioner no.2), Virender Kumar (Petitioner No.3), Tarsem Kumar (Petitioner No.4) and Ashish Kumar (Petitioner No.5) were engaged as helpers in 1994, 1995,

1994 and 1995 respectively on monthly wages of Rs. 1520. They continued to work till 10.2.1999 when the respondent management indulged in unfair labour practice by locking out the unit without complying with the statutory and mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). In fact, on 10.2.1999, when they had gone to the unit for doing their respective works, the gates were found locked and the premises closed. On 9.2.1999, the official of the management had called them as well as other co-workers by forcibly asking them to settle their accounts failing which to face dire consequences. No notice had been given to them before the lock out. Similarly, no intimation had been sent to the concerned authorities. Besides, the petitioners were not paid their wages i.e. for the month of Jan., as well as Feb., 1999 and other dues as per the Act. They were also not paid gratuity and other benefits. In this way, their termination without complying with the mandatory provisions of the Act is totally unjust and unlawful. It is further averred that subsequent to 10.2.1999, M/s Himvision, Sector -1 Parwanoo has been working under new name and style i.e. S.J.S Tell Trade and have employed fresh workers from the open market. This also goes to show that that the respondent management had been indulging in unfair labour practice just to throw out the petitioners from their jobs. Since, their services have been illegally and arbitrarily terminated, they are entitled to be reinstated w.e.f. 10.2.1999 with all consequential, benefits.

3. The claim of the petitioners has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been stated that there were in total 47 workers, including the petitioners, employed by respondent No.1, during the month of December, 1998 and their no. was 37 during Jan. 1999. All the workers had been clearly told that if the unit was to get another extension of sale tax exemptions, only then, it was to remain continue to manufacture its products, otherwise the same was to be closed. Earlier, on 20.4.1989, the government of Himachal Pradesh had allowed exemption for ten year from the payment of sales tax i.e. 12 % LST on all sales from the unit in the state of HP. Despite, best efforts, the unit could not get extension and it became almost difficult to continue the production because straightway the TV sale became costlier due to 12% LST. It is further pleaded that, at the time of closure of the unit, everything was settled, amicably with all the workers except the petitioners who never came forward. No notice was ever received from either Labour-cum-Conciliation Officer or Labour Commissioner despite the fact that the petitioners had been requested many times to settle their accounts. Regarding the stoppage of production, the respondent had also informed the concerned departments. The salary of January and February was paid to the petitioners. It has been denied that the respondent management had employed fresh workers from the market for SSJ Tele Trade. Other allegations denied.

4. It is to be made clear that one of the petitioners namely Sanjeev Kumar (Petitioner No.1) had settled his claim with the respondent management as is evident from his statement dated 4.10.2007, which is on record. This shows that as far as his claim, in the petition is concerned, the same stands already settled.

5. By filing rejoinder, the petitioners have reiterated their own allegations, by denying those of the respondent.

6. Pleadings of the parties gave rise to the following issues which were struck on 19.9.2003.

1. Whether the termination of services of the petitioners by the respondent w.e.f. 10.2.1999 as a result of alleged lockout, without paying the wages of the workers for the month of Feb. 1999 without any notice is illegal and unjustified? OPP.
2. Whether the petition is not maintainable? OPR.
3. Whether the petitioners are estopped from filing the petition due to their act and conduct? OPR.
4. Relief.

7. I have heard the learned counsel for the petitioners and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 : Partly Yes.

Issue No.2 : No.

Issue No.3 : No.

Relief. : Reference answered partly in favour of the petitioners and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

9. It has been specifically mentioned that the respondent management has not paid the wages for the month of Jan. & Feb., 1999 to the petitioners and that no notice had been issued to them before effecting lockout in the unit. Shri Sanjeev Kumar (PW-1) has tendered in evidence his affidavit Ex. PA wherein, all the facts as mentioned in petition have been supported on oath. He has also stated that when the factory was illegally closed, he had written several letters Ex. P/C-1 to Ex. P/C-7 to Labour Office and Labour Commissioner. In the cross examination, he stated that he does not know about the reasons on account of which, the factory was closed. He only knows about twenty workers, who were working in the workshop. He expressed his ignorance that in all, there were 47 workers. Except the petitioners, he does not know who were the other workers. He denied that the petitioners and other workers had been told to receive their monthly salary as the factory was to be closed.

10. Ex. PD, Ex. PE, Ex. PF, Ex. PG, Ex. PH and Ex. PJ are the affidavits of S/Shri Ashish Jain, Manohar Lal, Virender Kumar, Madan Lal, Bhagwan Dass and Tarsem Kumar, respectively.

11. In the affidavits, as referred to above, it has been stated on oath that the petitioners have not been paid wages for the month of Jan. & Feb. 1999 and also the gratuity. From the cross examination of PW-1 (Sanjeev Kumar), it appears that the respondent management had asked/told the petitioners and other workers to receive one month's salary as the factory was to be closed. No such suggestion has been given to the witness that for the month of Jan. & Feb. 1999, the salary had been paid to the petitioners. At this stage, I would like to point out that as per the reference made to this Court, the respondent management had not paid the wages to the workers for the month of Feb., 1999. There is nothing such in the reference to this Court that the petitioners had also not been paid the wages for the month of Jan. 1999. Had, such dispute been agitated by the petitioners in their demand notice to the Labour-cum-Conciliation Officer, definitely, the reference, made to this Court would have been that the alleged lockout w.e.f. 10.2.1999 was without paying the wages to the workers for the month of Jan. also. This court is required to answer the reference, in terms, in which it has been made. In these circumstances, although, there is sufficient evidence, on record, in the shape of above referred affidavits, that the petitioners have not been paid the wages for the month of Jan., this court cannot go beyond the terms of the reference. Thus, the petitioners are held entitled for their salary for the month of Feb., 1999, gratuity and other service benefits which they were entitled under the Act.

12. In the reply, reasons have been assigned as to why, the unit had to be closed down. In the petition it has not been mentioned that when the unit was closed, at that time, there were fifty workers employed therein or that there had been, on an average, per working day, more than fifty workers in the preceding twelve months. In the reply, it has been stated by the respondent that there had been only 47 workers in all including the petitioners during the month of December, 1998 and 37 during Jan., 1999. Shri Sanjeev Kumar (PW-1) says that he knew only twenty workers who were working in the workshop. Except the petitioners, he does not know as to who were the other workers. Moreover, neither in his affidavit Ex. PA it has been stated by him on oath, that there had been more than 50 workers nor that on an average per working day, there had been 50 workers preceding twelve months, from the date of lockout/closure. Similarly, from the affidavit of other petitioners aforesaid, the fact, regarding the number of workers i.e more than 25, is not proved. As per the requirement of section 25FFA, 60 days notice was required to be given by the respondent (employer) on prescribed manner, on the appropriate government stating clearly the reasons for the intended closure of the under taking, if the number of workers, had been more than fifty as referred to above.

13. Since, in the instant case, the petitioners have failed to prove aforesaid requirement of fifty workers, there is no violation of section 25FFA of the Act. Thus, on this score, the termination of the services of the petitioner cannot be said to be illegal.

14. Still, since from the affidavits on record, it stands proved that the petitioner had not been paid the wages for the month of Feb., 1999 as well as other dues admissible under the Act and also the gratuity, their termination is held to be illegal and unjustified, on this score. Consequently, my answer to this issue is in "Yes" accordingly.

Issue No. 2:

15. There is nothing on record which may show as to why this petition is not maintainable. Since, pursuance to the reference made to this Court, the petitioners had filed the statement of claim, the same is held to be maintainable because this court is required to answer the reference. Thus, my answer to this issue is in "No".

Issue No. 3:

16. No evidence has been led to prove this issue. Even from the reply, which has been filed by the respondent, it is not revealed as to how the petitioners are estopped from filing this petition. Thus, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner Nos. 2 to 7 is partly allowed by ordering that they be paid wages for the month of Feb., 1999 alongwith all the dues admissible under the Act as well as gratuity. Since, the unit in which the petitioners had been working stands closed, for the reasons as mentioned in the reply, and that there has not been any violation of section 25FFA, the reinstatement of petitioner no. 2 to 7 cannot be ordered. It is made clear that petitioner no.1 (Sanjeev Kumar) as per his statement dated 4.10.2007 had settled his claim, in this petition, in full & final with the respondent management. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 17th May, 2010.

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 182 of 2002.
Instituted on 21.6.2002.
Decided on. 31.5.2010.

Virender S/o Shri Surjeet Singh R/o V. P.O Taksal, Tehsil kasauli, District Solan, H.P. ..*Petitioner.*

VS.

1. Anuj Arora, Contractor M/s Eicher Demn, Plot No. 29-30, Sector-2, Parwanoo, District Solan, HP.
2. M/s Tafe Motors & Tractor, Pvt. Ltd., Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP.
..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri B.R Kashyap, Advocate.
For respondent no.1 Already ex-parte.
For respondent no.2 Shri T.S Chauhan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Virender S/o Shri Shri Surjeet Singh by the 1. Anuj Arora, Contractor M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP 2. General Manager, M/s Tafe Motors & Tractor, Pvt. Ltd., Plot no. 29-30, Sector-2, Parwanoo, District Solan w.e.f. 11.9.2000 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, to what relief of seniority, back wages, service benefits and amount of compensation, Shri Virender is entitled to?”

2. In nutshell, the case of the petitioner is that, he had been engaged as Gardner by the respondents in the year 1990 and without any interruption, worked till 10.9.2000. On 11.9.2000, his services were terminated without assigning any reason and at that time, he was drawing salary @ Rs. 1890/- per month. It is further averred that the work being performed by him is of permanent nature and is still continuing. However, without giving any notice or paying retrenchment compensation, his services were terminated, which deserve to be reengaged with all consequential service benefits.

3. It may be worthwhile to mention that initially, the claim of the petitioner was against respondent no.1 i.e Anuj Arora, Contractor M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP and respondent no.2 i.e. General Manager, M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP but during the proceedings of this case, the petitioner filed an application for getting impleaded M/s Tafe Motors & Tractor, Pvt. Ltd.,

Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP as respondent no.2 in place of earlier respondent no.2 i.e General Manager, M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP and his such application was allowed as per order dated 18.12.2007 and in consequence thereof, M/s Tafe Motors & Tractor, Pvt. Ltd., Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP was impleaded as respondent no.2 in place of M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP.

4. Whereas, respondent No.1 was proceeded against ex-parte, respondent No. 2 contested the calim of the petitioner on having raised various preliminary objections including maintainability and that the petitioner has suppressed material facts from this Court. On merits, it has been specifically denied that the petitioner was employed by the replying respondent as Gardner in the year 1990 and continued to work with it till 10.9.2002. In fact, he had been employed as helper in the year 1992 and thereafter he was promoted as Gardner by the Contractor, Shri Anuj Arora C/o M/s Arora nursery, Bungalow no. 158, Sector-6, Panchkula who had been given the contract of landscaping and development of parks etc. It is further asserted that as per the knowledge of the replying respondent, the petitioner had abandoned his job with the contractor on his transfer to Baddi in order to work with M/s Jayco India Pvt. Ltd.

5. Pleadings of the parties, gave rise to the following issues, which were struck on 10.8.2007.

1. Whether the services of the petitioner have been illegally terminated by respondent without complying with the provisions of I.D Act, 1947? If so, its effect? .OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..OPP.
3. Whether the petition in the present form is not maintainable? ..OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 : Yes.

Issue No.2 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No.3 : No.

Relief : Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Whereas the contention of respondent No.2 is to this effect that the petitioner had been engaged as Mali by respondent no.1 (**Anuj Arora, Contractor M/s Eicher Demn, Plot no. 29-30, Sector-2, Parwanoo, District Solan, HP**) but the assertion of the petitioner is specific that he had been engaged by the respondents in the year 1990. While appearing in the witness box as PW-1, he has specifically stated that in the month of December, 1991, he had been engaged as Mali by respondent company and worked as such till 11th September, 2000 when his services were terminated without notice or paying any compensation. In every calendar year, he had completed 240 days including the year preceding his termination. Vide letter Ex. PA, which had been received from the respondent, he had been asked to do job at Baddi upon which he went there but no job was given to him. In the cross-examination, he denied that at the time of his engagement, he was made to understand that the work was not of permanent nature at the place of his posting. Payment of salary was being made by Shri Jagroop of Eicher Company @ Rs. 1890 per month. He had received a letter from Arora nursery that his salary was enhanced to Rs. 2100/- at Baddi. He denied that he was the worker of Arora nursery and not that of Eicher Company. He further denied that the company had an agreement with the Arora Nursery and that for this reason, he had been engaged by the said nursery.

9. Evidence of Shri Baldev Singh (PW-2) is to this effect that the petitioner was engaged as Mali by the Eicher Company where he worked for ten years. He (PW-2), had also worked with the company for eight eyars and that the services of the petitioner had been terminated without notice and compensation during the period when he (PW-2) was in service. In the cross-examination, he denied that he (PW-2) was never engaged as Mali by the respondent company.

10. The evidence led by the petitioner has gone un-rebutted for the reason that contesting respondent No.2 did not lead any evidence despite many opportunities and finally on 30.4.2010, its evidence was closed by the order of the Court.

11. It has been specifically stated by the petitioner (PW-1) that he had been engaged as Mali by the respondent company and his such version also gets support from the statement of Shri Baldev Singh (PW-2). Although, it is the assertion of contesting respondent no.2 that the petitioner had been engaged by the contractor but this plea fails because no such witness including the contractor, has been examined who could have supported this fact/defence. Although, a suggestion has been given to PW-1 that Eicher company had an agreement with Arora Nursery but no such agreement has been brought on record. I may observe that if there had been any such agreement by Eicher Company with Arora Nursery, the same could have been a very material piece of evidence to show as and by whom the services of the petitioner had been engaged. From the letter, received by PW-1, from Arora Nursery, that his salary had been enhanced to Rs. 2100/- per month at Baddi, this fact is not proved that he was not worker of the respondent company (Eicher Damn) particularly when the statement of the petitioner (PW-1) is specific to this effect that he had been engaged by the respondent company in the month of December, 1991 and that his such version also gets approval from the statement of Shri Baldev Singh (PW-2) I may also like to observe that on the record, no such, licence has been produced/filed which could go to show that respondent no.1 was a registered contractor with respondent company. Since, the petitioner was doing work as Gardner with the respondent company (respondent no.2), his engagement as such will be deemed to be on behalf of the company, even if, it is believed that his engagement was through the contractor. I disagree with the Learned counsel for respondent no.2 that since, the petitioner had been engaged by respondent no.1 (contractor), therefore, there is no relationship of employee and employer between the petitioner and respondent no.2 (company). I may reiterate, that, if there had been any agreement between Arora Nursery (Contractor) and the company, the same could have been brought on record. Had this been done, the same would have facilitated to this court to know as to who had engaged the services of the petitioner. ***In Bharat Heavy Electricals Limited Vs. State of U.P & others, 2003 (6) SCC-528*** it has been held by the Hon'ble Supreme Court that **"Gardeners engaged through contractor who were looking after lawns and parks inside factory premises campus and residential colony of the company and that their work was supervised by the employee of the company, were the employees of the company, by applying control test"**.

12. From the statement of the petitioner (PW-1), it is further proved that in the twelve calendar months preceding his termination, he (petitioner) had completed 240 days. His such version has gone un-impeached. Thus, it is proved that before his termination, he (petitioner) had completed 240 days. In these circumstances, it was required of the respondents to have complied with the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). For the failure of the respondents to have complied with the aforesaid section, the termination of the petitioner is illegal and unjustified. Accordingly, my answer to this issue is in "Yes".

Issue No. 2:

13. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3:

14. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Moreover, the petitioner had been employed by the respondents in order to do the work of Gardner. Apart from it, the learned counsel for the contesting respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable my to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, by respondent No.2 (M/s Tafe Motors & Tractor, Pvt. Ltd. Plot No. 29-30, Sector -2, Parwanoo, District Solan, HP, who was impleaded in place of M/s Eicher Demn, Pvt. Ltd. Plot No. 29-30, Sector -2, Parwanoo, District Solan, HP vide order dated 18.12.2007) from the date of his termination i.e 11.9.2000. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 31st May, 2010 in the presence of parties counsels.

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref No. 187 of 2003

Instituted on .2003.

Decided on. 6.5.2010.

Ashwani Kumar S/o Shri Hari Nand C/o Shri J.C Bhardwaj, President HP AITUC, H.Q Saproon, District Solan, H. P. ..Petitioner.

VS.

The Principal DAV Centenary Public School, Kumarhatti, District Solan, H. P. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the plea of the Principla DAV Centenary Public School, Kumar Hatti, District Solan that Shri Ashwani Kumar S/o Shri Hari Nand Sharma (Accountant) worker left the job of his own accord w.e.f. 1.6.2002 and without serving any notice for absenteeism and abandonment, is legal and justified? If not, to what seniority, back wages, service benefits and relief, the concerned workman is entitled to?"

2. The case of the petitioner, as is borne out, from the statement of claim, filed before this Court, is to this effect, that the petitioner was appointed as an accountant in DAV School Kumarhatti (hereinafter referred School) vide letter dated 23.11.2000 and as such started performing all types of clerical duties including to maintain the account books. In fact, he had joined the above said post as per the terms and conditions of the appointment letter. In the year, 2002, the trouble started when the Principle of the School wanted some fake bills to be entered in the account books, which were not genuine. For this reason, Principle started harassing the petitioner on one pretext or the other. Ultimately, under the garb of alleged absenteeism/abandonment, his services were terminated on 1.6.2002. It has been alleged that a fresh hand has now been appointed in his place in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act). It is further alleged that he had completed 240 days during the tenure of his service, thus, his termination is illegal. Further, he has not been employed from the date of his termination and was drawing Rs. 4200/- per month as consolidated wages.

3. The claim of the petitioner has been contested on having raised various preliminary objections including qua maintainability. On merits, it has been asserted that the petitioner had been appointed against the post of Accountant on adhoc basis for a period of one year and that the same was subject to the approval of DAV College Managing Committee, New Delhi (hereinafter referred Managing Committee). In fact, one Shri Sandeel Uppal had been selected for the post of Accountant as per meeting of the adhoc selection committee dated 13.10.2000 but since he did not join the post, the appointment letter was issued to the petitioner who was at no.1 in the waiting list. The adhoc selection committee of the School in its meeting, held on 24.2.2001, had appointed the staff for the session 2000-01 and forwarded the same for approval to the Managing Committee, which gave its approval and accordingly, the staff was appointed on contractual basis from 1.3.2001 till the end of the session, including of the petitioner and other workers. Since, the meeting of the adhoc selection committee was scheduled to be held on 14.4.2002, the Principal of the School, wrote to the Chairman DAV Centenary Public School Kumarhatti on 4.4.2002 to grant approval in order to appoint staff for the month of April, 2002 as per which the further appointments were to be made w.e.f.1.3.2002. In the said letter, he (Principal) had also requested for approval for two months in respect of the services of the petitioner which was duly granted. Thereafter, in the meeting of adhoc selection committee, held on 14.2.2002, the appointments were made for the session 2002-03 and the merit list was sent for the approval of the Managing Committee. Since, in the merit list, one Shri Dhani Ram Kapil, was above the petitioner, his appointment to the post of accountant was recommended and the same was approved, by the Managing Committee w.e.f. 1.6.2002. The services of the petitioner had been retained for two months i.e April & May, 2002 for the reason that the work of the School may not suffer. Said Dhani Ram Kapil had joined as accountant from 1.6.2002 on adhoc basis. It has further been averred that the respondent School has not violated any principle of natural justice or the provisions of the Industrial Disputes Act, 1947. Since, the appointment of the petitioner was purely on contract and adhoc basis, the same was governed by section 2 (oo) (bb) of the Act and for this reason, no question of his retrenchment/termination arose. It has been asserted that the petitioner is gainfully employed.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.
5. The following issues were framed on 18.11.2005.
 1. Whether the petitioner abandoned the job of his own w.e.f. 1.6.2002 without notice is legal and justified? If so, its effect? ..OPR.
 2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? ..OPP.
 3. Relief.
6. I have heard the Learned AR for petitioner and Learned Counsel for respondent and have gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 : No.

Issue No.2 : Entitled to reinstatement with seniority and continuity alongwith back wages @ 25%.

Relief : Reference answered accordingly against the respondent.

REASONS FOR FINDINGS

Issue No. 1:

8. Admittedly, as per appointment letter Ex. PA, dated 23.11.2000, the petitioner had been appointed against the post of Accountant in the School. Whereas, the contention of the petitioner is to this effect, that his services were terminated, in violation of the provisions of the Industrial Disputes Act, 1947, the plea of the respondent School is to this effect that since his appointment was on adhoc and contractual basis, for one year, the same stood terminated automatically after the expiry of that period and that the same is covered under section 2 (oo) (bb) of the Act. The respondent has also taken this plea, that the petitioner had abandoned his job on his own w.e.f. 1.6.2002 and that his services had never been terminated. It is to be noted that the reference which has been made to this Court for adjudication, is regarding to this effect, whether the petitioner had left the job on his own w.e.f. 1.6.2002 and without serving any notice for absenteeism. Keeping in view the reference, the then Presiding Officer, HP Industrial Tribunal-cum-Labour Court had framed issue no.1, on the basis of the reference made to this court and the onus of the same was placed upon the respondent. At this stage, I may further make it clear that at no point of time, the respondent had claimed the issue that the services of the petitioner had stood terminated as per section 2 (oo) (bb) of the Act for the reason that his appointment was on adhoc and contractual basis for one year. In these circumstances, the only question which is required to be determined by this Court is whether the petitioner had abandoned his job on his own w.e.f. 1.6.2002 or not.

9. From the material on record, it is quite apparent that the appointment of the petitioner had been approved by the Managing Committee and that he had worked till 1.6.2002, the date when he allegedly abandoned his job. It has further been pleaded by the respondent that since the adhoc selection committee was scheduled to hold its meeting on 14.4.2002, for getting selected the staff for the academic year, 2002-03, the Principle of the School wrote a letter to Chairman of the School for granting approval to appoint staff for the month of April, 2002 because the further appointments/selections were required to be made from 1.3.2000 and that in pursuance to his such letter, approval in respect of the petitioner had also been granted for two months. This clearly shows that the petitioner had been permitted to continue his job as accountant beyond the period of one year for which his selection had been made vide appointment letter Ex. PA. The perusal of this letter, further goes to show that after the expiry of one year, his selection was to be regularized and that it was not on adhoc and contractual basis as is the defence version. In fact, it was initially for one year and the same was to be regularized after the expiry of one year. In these circumstances, if the plea of the respondent is considered that his (petitioner's) services stood automatically terminated after the expiry of contractual period i.e one year, and that his retrenchment/termination is covered under section 2(oo) (bb) of the Act, it does not carry any weight. In the statement of the petitioner as PW-1, it has come that he had remained in job till May, 2002 and completed 240 days before his removal. In order to adjust one Shri Dhani Ram, he had been removed from service without notice or retrenchment compensation. He had not abandoned the job. In the cross-examination, he denied that Dhani Ram was more meritorious and for this reason, he (Dhani Ram) was given appointment after his (Petitioner's) removal. Shri H.C Sirkake RW-1 has admitted that the petitioner had not abandoned his job but left the same when he was not selected.

10. When regard is given to the reply filed by the respondent School, it is quite clear that one Shri Dhani Ram had been selected for the post of accountant, which earlier was being held by the petitioner till 1.6.2002. There is nothing on record which could go to show that the work of the petitioner had not been found satisfactory during the period, till he remained in the job. As per appointment letter Ex. PA, his services were to be regularized after the completion of one year. This is sufficient to show that as per appointment letter, there was no such term and condition that a fresh interview/process was required to be initiated for filling up the post of accountant after the expiry of one year. From the statement of the petitioner as PW-1, it is clearly established that he had not abandoned the job on his own. This fact gets further support from the admission made by RW-1 Shri H.C Sirkake. I may also like to mention here that if the petitioner had abandoned his job, it was the duty of the respondent to have issued a notice to him for joining the duties, failing which his services were to be terminated or some other person was to be appointed in his place. Nothing such was done by the respondent School which further goes against the stand of the respondent regarding, such abandonment of the job on the part of the petitioner. For my discussion above, I do not subscribe to the contention of learned counsel for respondent that the petitioner had abandoned the job on his own. Consequently, my answer to this issue is in "No".

Issue No. 2:

11. In the statement of claim, it has been mentioned that the petitioner is not gainfully employed and also likely to remain as such in future. While appearing in the witness box as PW-1, the petitioner has stated that at present he is only doing agriculture work. His statement was recorded on 16.3.2006. It is true that the defence version is to this effect that the petitioner is gainfully employed and is earning Rs. 10,000/- but in support of this plea, nothing has been placed on record by the respondent. Hence, the evidence of the petitioner that he is not gainfully employed has to be believed and relied upon.

12. Now, the question which arises is whether the petitioner should be held entitled for back wages if so to what extent and for which period. Undoubtedly, Ld. Counsel for the respondent has contended that the petitioner is not entitled for back wages because his appointment was only for a particular period i.e. one year but in view of my discussion, forgoing, while deciding issue no.1, I am the view that this contention cannot be accepted. However, this fact is required to be considered by this Court, as to for how long, the petitioner remained in service with the respondent School. Since, on the record, it stands duly established that the petitioner had remained in service of the respondent School from 23.11.2000 till 1.6.2002, i.e for a short period of about 1½ years, he cannot be awarded full back wages. Taking into consideration, all the facts and circumstances, particularly the manner in which the services of the petitioner stood terminated/dispensed with w.e.f. 1.6.2002 by appointing another person in his place namely Dhani Ram, and also that the respondent has failed to rebut the evidence led by the petitioner regarding his having been not gainfully employed, it will be quite reasonable and justified, if the petitioner is awarded back wages @ 25% from the date of termination till reinstatement. He will also be entitled for seniority and continuity in service and as such this issue is decided accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service with seniority and continuity alongwith back wages @ 25% from the date of his termination i.e 1.6.2002 till his reinstatement. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 6th May, 2010 in the presence of parties counsels.

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla Camp at Solan.

